TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. ~~713~~ 29

WILLIAM B. CAMMARANO AND LOUISE CAMMARANO, HIS WIFE, PETITIONERS,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 10, 1958
CERTIORARI GRANTED MARCH 3, 1958

No. 15350

United States
Court of Appeals
for the Ninth Circuit

WILLIAM B. CAMMARANO and LOUISE CAMMARANO, His Wife,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Western District of Washington, Southern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States, for the Western District of Washington, Southern Division

No. 1873

WILLIAM B. CAMMARANO and LOUISE CAMMARANO, His Wife,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

I.

This is an action for recovery of income taxes alleged to have been erroneously or illegally assessed or collected. This Court has jurisdiction of such an action under Section 1346(A)(1) of Title 28, U.S.C.

II.

At all times herein mentioned, the plaintiffs were and now are husband and wife and citizens and residents of the State of Washington, residing at Tacoma, Pierce County.

III.

All of the income and property rights of the plaintiffs were and are of a community nature, and the claims herein asserted are the property of the community, representing taxes paid out of community funds.

IV.

For the calendar year 1948, plaintiffs filed a Federal Income Tax Return and the amount of tax due upon account thereof was duly and regularly paid in full. Said Return was subsequently audited by the Commissioner of Internal Revenue, and an additional tax in the amount of $198.08 together with interest was assessed against the plaintiffs, and was by them paid.

V.

In the audit and subsequent assessment of additional tax, the Commissioner, among other things, disallowed as a deduction the sum of $886.29, such amount being plaintiff's proportional share of $3,545.15 paid by Cammarano Bros., a partnership, to the Trust Fund of the Washington Beer Wholesalers' Association, Inc. The disallowance of this sum as a deduction decreased the medical deduction allowable to plaintiffs by $44.31. Thus, the disallowance of the payment to the Washington Beer Wholesalers' Association, Inc., increased plaintiffs' taxable income by $930.60. This resulted in an increase of $153.98 in the tax assessed against and collected from plaintiffs and the taxes of the plaintiffs were thus overpaid by such amount. The adjustments resulting in the additional amount of $44.10 of assessment are not being contested.

VI.

Plaintiffs are members of a partnership operating under the trade name "Cammarano Brothers" of Tacoma, Washington. Part of the business

activity of Cammarano Brothers is the distribution of beer. Plaintiffs own a ¼ interest in the partnership, Cammarano Brothers. The partnership contributed $3,545.15 during the year 1948 to the Washington Beer Wholesalers' Association, Inc., Trust Fund. The Trust Fund was established December 17, 1947, by the Washington Beer Wholesalers' Association, Inc., a corporation organized under the laws of the State of Washington, on February 6, 1934. The corporation was originally organized with the name, "Pacific Northwest Beverage Distributors, Inc.," under the provisions of Section 3888-3900, inclusive, of Remington's Revised Statutes of Washington, providing for non-profit corporations, and the corporation has continuously operated as such. The corporation was organized as a business or trade association, and its entire income is derived from dues and assessments paid by its members. Amended Articles of Incorporation, dated October 14, 1946, were filed in the Office of the Secretary of State, State of Washington, on November 14, 1946, and were duly recorded in Book 371, at pages 49 and 50 of Domestic Corporations. Under the amended Articles, the corporate name was changed to "Washington Beer Wholesalers' Association, Inc." The corporation was granted a tax exempt status by the Commissioner of Internal Revenue in a ruling dated September 3, 1937, and reconfirmed in a ruling dated June 15, 1949.

In a 30 day letter issued with reference to the partnership, Cammarano Brothers, on August 7,

1951, the Internal Revenue Agent in Charge of the Seattle Division of the Treasury Department, Internal Revenue Service, disallowed the payment of the $3,545.15 to the Trust Fund of the Washington Beer Wholesalers' Association, Inc., as a business expense deduction to the partners. He indicated that the funds were expended for the purpose of defeating Initiative 13 and was, therefore, not deductible, citing Section 29.23(q)-1 of Regulations 111. This Section of Regulations 111 provides in part, "Sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda, including advertising other than trade advertising, and contributions for campaign expenses are not deductible from gross income."

Under the laws of the State of Washington certain legislative powers are invested in the people as distinguished from the Legislature. Included in these powers are the powers reserved to the people under initiative provisions. These are provided in Amendment VII to the Washington State Constitution, which reads as follows:

"Art. 2 § 1 Legislative Powers, Where Vested. The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the State of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at

the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section or part of any bill, act or law passed by the legislature.

"(a) Initiative: The first power reserved by the people is the initiative. Ten per centum, but in no case more than fifty thousand, of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon, or not less than ten days before any regular session of the legislature. If filed at least four months before the election at which they are to be voted upon, he shall submit the same to the vote of the people at the said election. If such petitions are filed not less than ten days before any regular session of the legislature, he shall transmit the same to the legislature as soon as it convenes and organizes. Such initiative measure shall take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session. If any such initiative measure shall be enacted by the legislature it shall be subject to the referendum petition, or it may be enacted and referred by the legislature to the people for approval or rejection at the next regular election. If it is rejected or if no action is taken upon it by the

legislature before the end of such regular session, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X) for each, two preferences, first, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the votes on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law."

Initiative 13 was filed on August 23, 1946. The signature petitions were filed on January 23, 1947, and were found sufficient. The initiative was certified to the 1947 legislature, which took no action on it. The Washington legislature meets every two years and convened January 13, 1947, and adjourned March 13, 1947. The legislature was not in session during the balance of 1947 or during 1948. The initiative was then submitted to the people in the November 2, 1948, state general election, and the people voted it down.

The ballot title of Initiative 13 provided:

> "An Act prohibiting the retail sale of beer and wine by any person other than the State of Washington, repealing all provisions of existing law pertaining to licensing of retail sale of beer and wine, revoking existing licenses and providing penalties."

The Washington State Beer Wholesalers' Association Trust Fund was set up with the limitation that it would only be expended in a program of acquainting the people with what the initiative meant, where it would lead to, and who were its backers, and it was expended for that purpose alone. The publicity program recommended the defeat of Initiative 13, but it was a program of education and not a program of influence such as is disapproved in Regulations 111. At no time did representatives of Washington State Beer Wholesalers' Association appear before the legislature in connection with Initiative 13, and no funds were expended in connection with any possible influence of the legislature in connection with Initiative 13. It was a program taken to the people and limited to that. Cammarano Brothers' contribution was entirely proper and is deductible for income tax purposes under the law and regulations including the cited Section of Regulations 111. The contribution was ordinary and necessary to the business of the co-partnership. Plaintiffs' proportional share of the contribution is also properly deductible.

VII.

On or about the 26th day of December, 1951, plaintiffs filed with the Director of Internal Revenue, a claim for refund on Form 843 asking for a refund of the overpayment mentioned in paragraph V above, a copy of which claim is hereto attached, marked Exhibit "A," and by this reference made a part hereof. Said claim has been neither allowed nor rejected, although more than six months have long since elapsed.

VIII.

By reason of the foregoing, plaintiffs are entitled to recover from the defendant on account of overpayment of income taxes for the calendar year 1948 the sum of $153.98, together with interest thereon at the rate of 6% from the time payment of such amount was made.

Wherefore, plaintiffs pray for judgment against the defendant in the sum of $153.98, together with interest thereon at the rate of 6% per annum from the time such overpayment was made, and together with their costs and disbursements herein to be taxed.

/s/ A. R. KEHOE,

/s/ JONES & GREY,

Counsel for Plaintiffs.

Duly Verified.

EXHIBIT A

Claim

Form 843
U. S. Treasury Department
Internal Revenue Service

To Be Filed With the Director Where Assessment Was Made or Tax Paid

District Director's Stamp: Filed 12/26/51.

The Director will indicate in the block below the kind of claim filed, and fill in, where required, the certificate on the back of this form.

- ☐ Refund of Taxes Illegally, Erroneously or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

Name of taxpayer or purchaser of stamps: William B. Cammarano & Louise.

Street address: 2307 "A" Street.

City, postal zone number, and State: Tacoma, Washington.

1. District which return (if any) was filed: Tacoma, Washington.

2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from 1/1, 1948, to 12/31, 1948.

3. Kind of tax: Income.

4. Amount of assessment, $522.56; dates of payment, 1949, 1951.

* * *

6. Amount to be refunded: $153.98.

* * *

The claimant believes that this claim should be allowed for the following reasons:

Amount of $3,545.15 paid by Cammarano Bros., a partnership, to the Trust Fund of the Washington Beer Wholesalers' Association is an ordinary and necessary expense allowable under Section 23(a) of the I.R.C.

Taxpayers' proportionate share of the aboye deduction is $886.29.

This claim is filed for protective purposes pending outcome of similar issue now present in the Northwest Division of the Technical Staff.

I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief, is true and correct.

/s/ WILLIAM B. CAMMARANO,

/s/ LOUISE CAMMARANO.

[Endorsed]: Filed March 15, 1955.

[Title of District Court and Cause.]

ANSWER

The United States of America, the defendant above named, by Charles P. Moriarty, United States Attorney for the Western District of Washington answering the complaint herein respectfully alleges and shows:

1.

Admits the allegations of paragraph I.

2.

Is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph II.

3.

Is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph III.

4.

Denies the allegations of paragraph IV, but admits that plaintiffs filed an income tax return for 1948 and paid $324.48 thereon, and that subsequent to an assessment of a deficiency by the Commissioner of Internal Revenue, plaintiffs paid an additional amount of $229.97.

5.

Denies the allegations of paragraph V, but admits that "Cammarano Bros.," a partnership, contributed $3,545.15 in 1948 to the Trust Fund of the Washington Beer Wholesalers' Association, Inc.,

and that plaintiffs claimed a portion of that amount as a deduction from their income in 1948, and on account of said claimed deduction plaintiffs paid said deficiency, and have contested said assessment to the extent of $153.98.

6.

Denies that the said contribution or plaintiffs' share thereof was ordinary and necessary to the business of the partnership, or that it is deductible for income tax purposes under the law and regulations; and defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph VI, but it admits that plaintiffs own a one-fourth interest in a partnership in Tacoma, Washington, known as "Cammarano Brothers," part of whose business is the distribution of beer; and it admits that on August 7, 1951, the Acting Internal Revenue Agent in Charge in Seattle, Washington, for the Internal Revenue Service addressed to Cammarano Brothers notice of an adjustment of its net income for 1948 by additional income in the amount of $4,451.40, a result in part of a report which found an unallowable deduction of a "dues and subscriptions expense" of $3,545.15 for the said contribution, which was made for defeat of Initiative 13; and it admits that under the Constitution of the State of Washington the power of the initiative is one of the legislative powers reserved to the people of the State.

7.

Denies the allegations of paragraph VII, but ad-

mits that plaintiffs filed a claim for refund (Form 843) of $153.98 with the Collector of Internal Revenue where the tax was paid, a facsimile of which is attached to the complaint and marked Exhibit "A" but no allegation of which is admitted to be true.

8.

Denies the allegations of paragraph VIII.

Wherefore, the United States of America demands judgment dismissing the action with costs.

/s/ CHARLES P. MORIARTY,
United States Attorney;

/s/ THOMAS R. WINTER,
Special Assistant to Regional Counsel.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 20, 1955.

[Title of District Court and Cause.]

DEFENDANT'S TRIAL MEMORANDUM

This is an action by plaintiffs, husband and wife, in which they seek refund of federal income taxes for the year 1948 in the amount of $153.98, with interest.

Question Presented

Whether amounts paid to a special fund set up to finance a publicity program urging defeat of an

Initiative are deductible from gross income as "ordinary necessary expenses paid or incurred during the taxable year in carrying on" plaintiffs' business, within the meaning of Section 23(a)(1)(A), Internal Revenue Code of 1939.

Statute and Regulation Involved

Internal Revenue Code of 1939:

Sec. 23. Deductions from gross income. In computing net income there shall be allowed as deductions:

(a) Expenses.

(1) Trade or business expenses.

(A) In general. All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business * * *

(26 U.S.C. 1948 Ed., Sec. 23.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

Sec. 29.23(o)-1. Contributions or Gifts by Individuals.

Sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda, including advertising other than trade advertising, and contributions for campaign expenses, are not deductible from gross income.

Statement

The admitted facts and evidence will show that plaintiffs were partners in a firm, Cammarano Brothers, which was engaged during the year in question in the wholesale distribution of beer. The partnership belonged to the Washington Beer Wholesalers Association, Inc., a business league ruled exempt from corporate income tax by the Internal Revenue Service.

During that year, the Association and other interested groups established a special committee to carry out a publicity campaign urging defeat of Initiative 13, which was to be voted on by the people of Washington at the general election in November. The Association established a special fund to finance its share of the campaign, and Cammarano Brothers made payments to that fund. Plaintiffs sought to deduct their share of such payments, in determining their net taxable income for the year. The Commissioner disallowed the claimed deduction, and plaintiffs paid additional tax, refund of which they seek in this action.

Jurisdiction of the action lies in the Court by virtue of 28 U.S.C. Section 1346.

Argument

In support of their claim, plaintiffs argue that the payments in question were to a tax-exempt association, and used exclusively to present to the public their position with respect to legislation

which would affect their business, and which was to be voted on by the public rather than elected representatives in the legislature.

Concededly, Initiative 13 would have affected a portion of plaintiffs' business, and perhaps would have put them out of business entirely. That without more would make the payments capital items, deductions for which cannot be claimed under our system of annual computation of net income for tax purposes. See, e.g., Welch v. Helvering, 290 U.S. 111.

However, it is clear that the payments were not to the Association as such. They were solicited, handled and used in a manner and for a purpose separate and distinct from the ordinary activities of the Association. Had it been otherwise, the whole exemption of the Association would have been jeopardized. See, e.g., McClintock-Trunkey Co. v. Commissioner, 19 T. C. 297.

In any event, plaintiffs' claim comes too late. It has long been established that payments for information or publicity aimed at securing the defeat of legislation are not deductible, however justified or salutary the purpose may be. Such payments fall squarely within the ruling of the Court of Appeals for the Ninth Circuit in Old Mission P. Cement Co. vs. Comm'r, 69 F. 2d 676, and the ruling of the Internal Revenue Service which has been in the form set out above substantially since 1915 and which has been followed and applied repeatedly. See, e.g., Textile Mills S. Corp. v. Comm'r., 314

U.S. 326; Sunset Scavenger Co. v. Comm'r., 83 F. 2d 453 (CA 9th, 1936); Roberts Dairy Co. v. Comm'r., 195 F. 2d 948 (CA 8th, 1952); American Hardware & Eq. Co. v. Comm'r., 202 F. 2d 126 lon, 137 F. Supp. 293 (D. Mass., 1955).

Plaintiff's payments are within these rulings. They were for the "defeat of legislation" and for "advertising other than trade advertising." It makes no difference that the publicity campaign was aimed at the public, or that the legislation was to be enacted by the public rather than representatives. Just such a situation was involved in four of the cited cases. In the other two, Textile Mills and Sunset Scavenger, the campaigns were, in part at least, aimed at the public.

Conclusion

For the foregoing reasons, plaintiffs' action should be dismissed.

Respectfully submitted,

CHARLES K. RICE,
Acting Assistant Attorney General;

ANDREW D. SHARPE,
KURT W. MELCHIOR,
THEODORE D. TAUBENECK,
Attorneys, Department of Justice;

CHARLES P. MORIARTY,
United States Attorney;

GUY A. B. DOVELL,
Assistant United States
Attorney.

March, 1956.

[Endorsed]: Filed March 19, 1956.

[Title of District Court and Cause.]

PRETRIAL ORDER

As the result of pretrial conferences heretofore had, whereat the plaintiffs were represented by Jones & Grey and A. R. Kehoe, and the defendant by its attorney of record, the following issues of fact and law were framed and exhibits identified:

Admitted Facts.

1. This is an action for recovery of income taxes alleged to have been erroneously or illegally assessed and collected. This Court has jurisdiction of such an action under Section 1346(A)(1) of Title 28, U. S. C.

2. At all times herein mentioned, the plaintiffs were, and now are, husband and wife and citizens and residents of the State of Washington, residing at Tacoma, Pierce County, Washington. The claim herein asserted is community property of plaintiffs.

3. For the calendar year 1948, plaintiffs filed a timely Federal Income Tax Return and paid the

tax shown due thereon in the amount of $324.48. The return was subsequently audited by the Commissioner of Internal Revenue and an additional tax in the amount of $198.08 was assessed against plaintiffs and plaintiffs paid such deficiency, together with interest of $31.89 on October 16, 1951. On the 29th day of December, 1951, plaintiffs filed with the Collector of Internal Revenue at Tacoma, Washington, a claim for refund on Form 843, a facsimile of which is attached to the complaint herein, said claim relating to the year 1948 and asking for a refund of $153.98. The claim had neither been allowed or rejected on March 15, 1955, and on that date the action herein was filed. Plaintiffs' original return had been filed with the Collector of Internal Revenue at Tacoma, Washington.

4. Plaintiff husband, William B. Cammarano, was a member of a partnership operating under the trade name "Cammarano Brothers" in Tacoma, Washington. Plaintiffs own a one-fourth interest in the partnership. Part of the business acivity of the partnership is the wholesale distribution of beer.

5. The partnership "Cammarano Brothers" paid $3,545.15 during the year 1948 to the Washington Beer Wholesalers Association, Inc., Trust Fund. The payments were made as follows: Check No. 35552 dated July 2nd, 1948, in the amount of $948.58; Check No. 36375 dated September 21, 1948, in the amount of $1,133.57; Check No. 36786 dated November 4, 1948, in the amount of $887.88; Check No. 37239 dated December 29, 1948, in the amount

of $575.12. Plaintiffs' proportionate share of such partnership contribution was $886.29. The Commissioner of Internal Revenue disallowed the $886.29 as a deduction by plaintiffs in their income tax return and if the Court holds for the plaintiffs they will be entitled to a refund of $153.98 for the year 1948 together with interest and costs as may be fixed by the Court.

6. The Washington Beer Wholesalers Association, Inc., Trust Fund was established December 17, 1947, by the Washington Beer Wholesalers Association Inc., a non-profit trade association corporation organized under the laws of the State of Washington on February 6, 1934. The corporation was originally organized under the name Pacific Northwest Beverage Distributors, Inc., under the provisions of Section 3888-3900, inclusive, of Remington's Revised Statutes of Washington. Amended Articles of Incorporation dated October 14, 1946, were filed in the office of the Secretary of State of the State of Washington on November 14, 1946, providing for a change in the corporate name of the corporation to Washington Beer Wholesalers Association, Inc. The corporation was recognized as exempt from Federal income tax in a ruling of the Commissioner of Internal Revenue dated September 3rd, 1937, and reconfirmed in a ruling dated June 15, 1949.

7. In the November 2, 1948, Washington State General Election, Initiative to the Legislature No. 13 was submitted to a vote of the people and was

voted down. The Initiative measure had been filed with the Secretary of State of the State of Washington on August 23, 1946. The signature petitions were filed January 3, 1947, and were found sufficient. The Initiative was certified to the 1947 Legislature which took no final action upon it. The Initiative was then submitted to the November 2, 1948, state general election. The Washington Legislature meets every two years. It convened January 13, 1947, and adjourned March 13, 1947. It was not in session during the balance of 1947 or during 1948. The ballot title of the Initiative provided:

> "An Act prohibiting the retail sale of beer and wine by any person other than the State of Washington, repealing all provisions of existing law pertaining to licensing of retail sale of beer and wine, revoking existing licenses and providing penalties."

8. The trust fund was set up by the Washington State Beer Wholesalers Association, Inc., to help finance a publicity program on the Initiative. The publicity program urged the defeat of the Initiative and was carried out by an informal committee created by beer and wine dealers, grocers and other interested parties. In less than one year, by assessment and otherwise, the Beer Wholesalers Association obtained for its trust fund $62,064.19.

Plaintiffs' Contentions

Plaintiffs claim the right to deduct their contribution to the Washington Beer Wholesalers As-

sociation, Inc. Trust Fund under Section 23(a)(1) of the Internal Revenue Code of 1939, as amended, as an ordinary and necessary expense paid during the taxable year in carrying on their trade or business and/or under Section 23(o)(2) as a contribution to a corporation organized under the laws of the State of Washington, organized and operated as a business league not operated for profit and no part of the net earnings of which inures to the benefit of any shareholder or individual qualifying under Section 101(7) of the Internal Revenue Code of 1939, as amended.

Defendant's Contentions

Plaintiffs' contribution does not qualify as a deduction either under Section 23(a)(1) or 23(o)(2) of the Internal Revenue Code of 1939, as amended.

Issues of Fact

The following are the issues of fact to be determined by the Court:

1. Was plaintiffs' contribution an ordinary and necessary expense paid during the taxable year in carrying on plaintiffs' trade or business?

2. Was a substantial part of the activities of the fund to which plaintiffs contributed the carrying on of propaganda or otherwise attempting to influence legislation?

3. Was any of the contribution expended for lobbying purposes, the promotion or defeat of legis-

lation, or the exploitation of propaganda, including advertising other than trade advertising?

Issues of Law

The following are the issues of law to be determined by the Court. Is plaintiffs' contribution deductible under Section 23(a)(1) and/or Section 23(o)(2) of the Internal Revenue Code of 1939, as amended?

Exhibits

Photostatic copies of the exhibits of all parties below listed were produced and marked, and may be received in evidence if otherwise admissible without further authentication, it being admitted that each is what it purports to be. The parties shall not be precluded from offering additional exhibits for good cause shown for the withholding or delay in presentation thereof.

Plaintiffs' Exhibits

1. Articles of Incorporation of Pacific Northwest Beverage Distributors, Inc.

2. Resolution and Bank Authorization of Washington Beer Wholesalers Association, Inc., Trust Account.

3. Initiative to the Legislature No. 13.

4. Treasury Department letter dated June 15, 1949.

5. Resolution and Bank Authorization furnished the Seattle-First National Bank.

6. Secretary of State's Pamphlet on Initiative 13.

7. Reproductions of some advertisements of Initiative 13.

Defendant's Exhibits

1. 1948 Return of William B. and Louise Cammarano.

2. Citizens Liquor Control Council, Inc., advertisment on Initiative 13.

3. Washington Beer Wholesalers Assn., Inc., bulletin of November 20, 1947, and supplement.

4. Authorization for Signing and Indorsing Checks of Industry Advisory Committee Fund.

5. Statement of Cash Receipts and Disbursements, Industry Advisory Committee.

The foregoing Pretrial Order has been approved by the parties hereto, as evidence by the signatures of their counsel hereon, and upon the filing hereof the pleadings pass out of the case and are superseded by this order, which shall not be amended except by agreement of the parties and approval of the Court.

Dated at Tacoma, Washington, this 17th day of March, 1956.

/s/ GEORGE H. BOLDT,
United States District Judge.

Approved:

/s/ A. R. KEHOE,
Attorney for Plaintiffs.

/s/ T. D. TAUBENECK,
Assistant United States Attorney.

[Endorsed]: Filed March 19, 1956.

[Title of District Court and Cause.]

ORAL DECISION
March 19, 1956

Boldt, District Judge:

Whatever doubt there may have been about the meaning and application of Treasury Regulation 111 § 29.23(o)-1 when it was first adopted some twenty years ago, and for some time thereafter, there does not seem to be much room for doubt about it now in the light of all of the cited decisions construing and applying the regulation. Textile Mills Corp. v. Commissioner, 314 U.S. 326; Old Mission P. Cement Co. v. Commissioner, 69 F. 2d 676 (CA 9th); Sunset Scavenger Co. v. Commissioner, 83 F. 2d 948 (CA 9th); Roberts Dairy Co. v. Commissioner, 195 F. 2d 948 (CA 8th); American Hardware & Eq. Co. v. Commissioner, 202 F. 2d 126 (CA 4th); Revere Racing Association v. Scanlon, 137 Fed. Supp. 293 (D.C. Mass.).

This regulation has been held to have the force of law just as though it were a statute, and the regulation in brief says that sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda including advertising other than trade advertising, and contributions for campaign expenses are not deductible from gross income.

It will be observed that several different categories of expenses are referred to. Lobbying expense is one, sums expended for the promotion or defeat of legislation is another, the exploitation of propaganda is a separate category, and so on. Under the cases construing this language, particularly the Ninth Circuit case, Sunset Scavenger Co. v. Commissioner, supra, the meaning of the regulation as applied to the facts of this case is clear. In Webster's International Dictionary and in "Words and Phrases," the meaning of the word "legislation" is given as having to do with the making of laws, however made. There are many decisions to such effect. In other words, the making of laws is legislation whether the laws are made by a sovereign ruler, a city council, county commissioners, a state legislature, Congress, or by the people directly through an initiative or referendum measure.

In applying the regulation there is no rational basis for making a distinction between sums of money spent for the purpose of influencing the public in their action on an initiative measure and

sums spent with the object of influencing members of the legislature with respect to pending legislation. There certainly is not any ground for making that distinction in the language of the Treasury regulation. The regulation flatly says that sums of money expended for the promotion or defeat of legislation are not deductible from gross income. An initiative measure is just as much legislation as an act of a legislature or any other enactment of law.

It is admitted in the record that the sums here in question were spent by the taxpayer for the purpose of defeating the enactment of certain legislation by initiative and that being so, those sums are not deductible from gross income. This is not to indicate that there is anything evil or corrupt about spending money for these purposes. Quite the contrary. The expenditure of money to enlighten and inform the public with respect of initiative measures is a perfectly proper and laudable activity. When the general public are called upon to enact or refuse to enact legislation, the more information they are given and the more widespread it is distributed the better. Certainly neither this taxpayer nor the Washington Brewers Institute nor the brewing industry are in any manner to be criticized for having spent the money to defeat the legislation by fair publicity. They had a right to do that and propriety of expenditures therefor is not in question. But that has nothing whatever to do with whether the sums so spent by the taxpayer are deductible for income tax purposes. In that

matter the regulation is controlling and clearly requires judgment in favor of defendant. So ordered.

GEORGE H. BOLDT,
United States District Judge.

[Endorsed]: Filed March 28, 1956.

[Title of District Court and Cause.]

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on for trial before the Court at Tacoma, Washington, on March 19, 1956. Plaintiffs were represented by Jones and Grey and Adlore R. Kehoe and Hargrave A. Garrison, II, and defendant was represented by Charles P. Moriarty, Esq., United States Attorney; Guy A. B. Dovell, Esq., Assistant United States Attorney, and Kurt W. Melchior and Theodore D. Taubeneck, Esqs., Attorneys, Department of Justice, Washington 25, D. C.

The Court, having considered the pretrial order heretofore entered, the evidence and exhibits adduced by the parties, and the arguments of counsel, and being fully advised in the premises, and having heretofore rendered an oral opinion, now finds the facts herein and states its conclusions of law as follows:

Findings of Fact

1. At all times material, plaintiffs were husband and wife, residing in the State of Washington. As such they filed their joint income tax return for the year 1948 with the Collector of Internal Revenue for the District of Washington and paid the tax shown thereon to be due.

2. Thereafter, the Commissioner of Internal Revenue caused an examination of that return to be made, and upon audit assessed against plaintiffs a deficiency in income tax for that year in the amount of $198.08, with interest, all of which plaintiffs paid to said Collector on October 16, 1951.

3. Thereafter, plaintiffs filed a timely claim for refund of said deficiency payment, and more than six months later they commenced this action to recover said payment, with interest.

4. At all times material, plaintiffs owned a one-fourth interest in a partnership carrying on wholesale distribution of beer under the trade name "Cammarano Brothers" in Tacoma, Washington.

5. During 1948, the partnership paid $3,545.15 to the Washington Beer Wholesalers Association, Inc., Trust Fund, plaintiffs' proportionate share of such payments being $886.29. The Trust Fund had been established on December 17, 1947, by the Association of which the partnership was a member, to help finance an extensive state-wide publicity program on the part of wholesale and retail beer and wine dealers.

6. This publicity program urged the defeat of Initiative to the Legislature No. 13, which was submitted to the people of Washington in accordance with the legislation provisions of the State Constitution at the general election on November 2, 1948. That Initiative would have placed the retail sale of wine and beer exclusively in state-owned and operated stores. The ballot title of the Initiative provided:

> "An Act prohibiting the retail sale of beer and wine by any person other than the State of Washington, repealing all provisions of existing law pertaining to licensing of retail sale of beer and wine, revoking existing licenses and providing penalties."

7. The initiative measure had been filed with the Secretary of State of the State of Washington on August 23, 1946. The signature petitions were filed January 3, 1947, and were found sufficient. The initiative was certified to the 1947 Legislature which took no final action upon it. The initiative was then submitted to the November 2nd, 1948, state general election. The Washington Legislature had convened January 13, 1947, and adjourned March 13, 1947, and was not in session during the balance of 1947 or during 1948.

8. With the measure going before the people, the wholesale and retail wine and beer dealers decided to undertake a vast publicity program aimed at the people, who were to vote on the measure in November, 1948. It was decided that the program

should be directed by a committee made up from the various groups and associations interested in defeat of the measure, and financed by contributions from those groups and associations and other interested parties. An Industry Advisory Committee was established to direct the program, in support of which it was furnished with $231,257.10. Of that amount, $53,500.00 came from the Beer Wholesalers Association, which collected the money by assessing its members amounts based upon their volume of business. The collections were handled through a Trust Fund which was established as a separate entity to receive and disburse the assessments. The program was carried out by various types of advertising.

9. The evidence shows that if the initiative measure had been passed, many of the members of the Washington State Beer Wholesalers' Association would have been put out of business and for that reason the expenditure by them was an ordinary and necessary business expense. In any event, the initiative measure was defeated.

10. As early as September 3, 1937, the Commissioner of Internal Revenue ruled that the Beer Wholesalers' Association was itself exempt from federal income tax. During the period of the publicity program, that Association continued its usual activities, and collected its usual dues from its members, including Cammarano Brothers.

11. The payments made to the Trust Fund by Cammarano Brothers were for purposes of in-

fluencing the defeat of the initiative measure. There was nothing wrong or evil or corrupt about spending money for this purpose. The expenditure of money to enlighten and inform the public with respect to initiative measures is a perfectly proper activity and a laudable activity, as a matter of fact. When the general public is going to be called upon to enact or refuse to enact legislation, the more information it can be given and the more widespread it is given, the better. Neither this taxpayer nor the Washington Brewers' Institute nor the industry are in any manner whatever to be criticized for having spent the money to defeat the initiative measure. They had the right to do that. But that has nothing whatever to do with whether the sums they spent are deductible for income tax purposes. There we are controlled by this Regulation which provides in brief that sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda including advertising other than trade advertising, and contributions for campaign expenses are not deductible from gross income. The Regulation has been in effect for some twenty years and has been held to have in effect the force of law just as though it were a statute. The Regulation flatly states that sums of money expended for the promotion or defeat of legislation are not deductible from gross income. An initiative measure, such as is involved here, is legislation just as much as an act of the Legislature. In the light of all of the cases that have come down construing this language, and particularly our own Ninth

Circuit case, the Sunset Scavenger Company case, decision will be entered in favor of the defendant.

Conclusions of Law

1. The Court has jurisdiction of the parties and subject matter of this action.

2. Plaintiffs contend that the amount paid by Cammarano Brothers to the Trust Fund should have been allowed by the Commissioner as an "Ordinary and necessary expense paid or incurred during the taxable year in carrying on" its business of the wholesale distribution of beer, under Section 23(a)(1)(A) of the Internal Revenue Code of 1939 (26 U.S.C. 1952 Ed., Sec. 23). But it is clear that the payment to the Trust Fund was aimed at the defeat of legislation. For this reason, and without in any way condemning the stand taken in the campaign, the payment is not deductible under that Section, according to long-standing Treasury Regulations (T.R. 111, Sec. 29.23(o)-1) and a host of judicial decisions. See, e.g., Textile Mills Corp. v. Commissioner, 314 U.S. 326; Old Mission P. Cement Co. v. Commissioner, 69 F. 2d 676 (CA 9th); Sunset Scavenger Co. v. Commissioner, 83 F. 2d 948 (CA 9th); Roberts Dairy Co. v. Commissioner, 195 F. 2d 948 (CA 8th); American Hardware & Eq. Co. v. Commissioner, 202 F. 2d 126 (CA 4th); Revere Racing Association v. Scanlon, 137 F. Supp. 293 (DC Mass.). Plaintiffs make much of the fact that the instant publicity campaign was aimed at the people generally rather

than the legislature, but no such distinction is recognized by the cited cases nor does it commend itself to reason. Certainly publicity can be directed at legislators both directly and indirectly. But more important for purposes of this case, the measure at which the instant campaign was aimed was clearly legislation, albeit subject to enactment by the people generally rather than members of a legislature.

3. Plaintiffs are not entitled to a refund of their 1948 income taxes, and their complaint must be dismissed. Judgment may be entered accordingly.

Done in Open Court at ....., Washington, this .... day of ....., 1956.

.....,
United States District Judge.

Presented and approved by:

/s/ A. R. KEHOE,
Attorney for Plaintiffs.

Copy Received: 6/13/56.

/s/ GUY A. B. DOVELL,
Assistant United States Attorney.

Lodged June 13, 1956.

[Title of District Court and Cause.]

PLAINTIFFS' OBJECTIONS TO DEFENDAND'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs object to the following proposed Findings of Fact and Conclusions of Law on the grounds that each thereof is contrary to and unsupported by the evidence in this case.

I.

Defendant's proposed Finding of Fact No. 7 should be stricken in its entirety and plaintiffs' proposed Finding of Fact No. 7 should be inserted in lieu thereof. Plaintiffs' proposed Finding of Fact is taken in its entirety from the admitted facts in the pretrial order herein.

II.

The words "none of which had reference to the wares of members of the Association" at the end of defendant's proposed Finding No. 8 should be stricken and a period should be inserted after the word "advertising" where a comma is now indicated.

III.

Defendant's proposed Finding of Fact No. 9 should be stricken in its entirety and there should be inserted in lieu thereof plaintiffs' proposed Finding of Fact No. 9. Mr. Chester A. Adwen, Secretary of the Washington Beer Wholesalers As-

sociation, testified that if the initiative had passed, 90% of the beer wholesalers would have been put out of business. Tr. page 31. The Court of Appeals for the Seventh Circuit succinctly stated the principle applicable in the case of Heininger v. Commissioner, 133 F. (2d) 567, at 569 as follows:

> "Without this expense, there would have been no business. Without the business, there would have been no income. Without the income, there would have been no tax. To say that this expense is not ordinary and necessary is to say that that which gives life is not ordinary and necessary."

IV.

Defendant's proposed Finding of Fact No. 11 should be stricken in its entirety and there should be inserted in lieu thereof plaintiffs' proposed Finding No. 11 which is taken practically verbatim from the oral decision of the Court herein.

V.

Defendant's Conclusion of Law No. 2 should be amended by striking the word "perfectly" in line 3 of page 4, and striking the words "entirely for propaganda" in line 4 of page 4, and striking the words "both of these reasons" in line 5 of page 4 and inserting in lieu of the latter the words "this reason." These changes will correct defendant's allegation that the expenditures were entirely for propaganda.

Respectfully submitted,

/s/ A. R. KEHOE,
Counsel for Plaintiffs.

Receipt of Copy acknowledged.

[Endorsed]: Filed June 13, 1956.

[Title of District Court and Cause.]

OFFER OF PROOF

For purposes of completing the record in this case and in accordance with the Court's statement that plaintiffs should have full opportunity to make a record on the question of relevancy of the material covered by the Interrogatories propounded in this case, plaintiffs make the following offer of proof to be added to the record in this case in the event an appeal is involved.

It is the plaintiffs' position that the Commissioner of Internal Revenue himself has recognized in rulings that where a publicity program is taken to the people and no legislators are involved, expenditures in connection with such publicity program are deductible.

On or about September 25, 1950, the J. W. Jackson Beverage Company of Fayetteville, Inc., Fayetteville, North Carolina, filed a Protest covering the fiscal year ending February 28, 1949, of the company with P. M. Sawyer, Internal Revenue Agent in Charge, Greensboro, North Carolina. The

Protest covered a proposed disallowance of an item of $2,682.50 as a deduction, stating in part as follows:

"The laws in North Carolina with respect to the sale of malt beverages provide for a county option, and the process of determining whether or not the sale of the malt beverage is legal, is dependent upon an election by the people. The expenditures made by this company were made at a time which the Legislature of North Carolina was not in session, and were made for the purpose of protecting the business of this corporation, and not for the purpose of defeating or promoting legislation.

"The sum of $2,682.50 paid by the taxpayer to the North Carolina Beer Distributors Association, Cape Fear Malt Beverage Association, and Cumberland County Malt Beverage Association was for the purpose of protection, with the hope of insuring the continued operation of the business. In the first county elections, in Cumberland, Columbus and Bladen Counties the elections were lost and it was necessary that our office and warehouse located at Fayetteville be closed, however, through hard work and by the payment of necessary expenses in connection therewith, including the pooled resources of the several members of the several associations, the City of Fayetteville and the Town of Whiteville, North Carolina, in a separate authorized election voted for the legal sale of beer within the City and Town limits, enabling us to reopen our office and warehouse and to continue in business. This could

not have been done without the co-operative efforts of the several dealers in the area and through the associations to whom the subscriptions and dues were paid.

"Your attention is called to the ruling made by the Bureau of Internal Revenue, Washington, D. C., in connection with 'Colorado United, Inc.,' in which the Internal Revenue Agent in Charge at Denver had disallowed a deduction for payments made to the Association Colorado United, Inc., an organization formed for the purpose of combatting the efforts of prohibitionists to destroy the alcoholic industry in Colorado and the Nation. The taxpayer making the payment to the association 'Colorado United, Inc.,' was a wholesale beer distributor. The Bureau of Internal Revenue in Washington has ruled, and has so directed the Internal Revenue Agent in Charge, that anyone financially interested in the alcohol beverage industry in Colorado, who makes payments of that nature and for the purpose of defeating the prohibitionists, will be allowed a deduction from gross income, for such payments in determining the taxable income of the taxpayer, as an ordinary and necessary business expense under Section 23(A) (1) (A) of the Internal Revenue Code.

"In addition to the ruling made by the Bureau of Internal Revenue in Washington with respect to payments made to associations for the purpose cited, the taxpayer calls to your attention the following case decided in favor of the taxpayer:

"Luther Ely Smith v. Comm. of Internal Revenue, 3 TC 92, Docket #109631, promulgated May 1, 1944;

"The taxpayer contributed $2,500.00 to the Missouri Institute for the Administration of Justice, an organization having for its immediate purpose the establishment by constitutional amendment of a new modified appointive system for the selection of judges to take the place of selection by primary and general election. * * * 'Petitioner was motivated in making this contribution by civic consideration and also by a desire to protect and improve the practice of law in which he was engaged' * * * The Tax Court held that the expenditure (contribution) was deductible as an ordinary and necessary business expense. 'The petitioner made the contribution in the belief that the reform resulting from the adoption of the sponsored amendment would benefit the legal profession generally, and his own practice specifically' * * *

"It is respectfully requested that this matter be referred to the Bureau of Internal Revenue in Washington for a specific ruling on the question, * * *"

The Office of the Internal Revenue Agent in Charge acknowledged receipt of the Protest on September 25, 1950, and, on October 13, 1950, advised taxpayer as follows:

"Consideration has been given to your protest dated September 21, 1950, to the proposed change in

your federal income tax liability for the fiscal year ended February 28, 1949. In accordance with your request, the file in this case has been transferred to the Bureau of Internal Revenue at Washington, D. C., for advice, and in event an adverse decision is indicated on the basis of the record in this case, you will be granted a hearing in Washington before a representative of the Deputy Commissioner of the Income Tax Unit."

On December 8, 1950, the Office of the Internal Revenue Agent in Charge advised taxpayer by letter that taxpayer's position on the $2,682.50 item was conceded and there was enclosed a recomputation of taxpayer's tax liability for the fiscal year ended February 28, 1949, allowing the item as a deduction in full.

The Commissioner acquiesced in the Luther Ely Smith decision, 3 T.C. 696, in 1944 C.B. 26.

/s/ JONES & GREY,

/s/ A. R. KEHOE,

Attorneys for Plaintiffs.

[Endorsed]: Filed July 30, 1956.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on for trial before the Court at Tacoma, Washington, on March 19, 1956. Plaintiffs

were represented by Jones and Grey and Adlore R. Kehoe, Esqs., and defendant was represented by Charles P. Moriarty, Esq., United States Attorney; Guy A. B. Dovell, Esq., Assistant United States Attorney, and Kurt W. Melchior and Theodore D. Taubeneck, Esqs., Attorneys, Department of Justice, Washington 25, D. C.

The Court, having considered the pretrial order heretofore entered, the evidence and exhibits adduced by the parties, and the arguments of counsel, and being fully advised in the premises, and having heretofore rendered an oral opinion, now finds the facts herein and states its conclusions of law as follows:

Findings of Fact

1. At all times material, plaintiffs were husband and wife, residing in the State of Washington. As such they filed their joint income tax return for the year 1948 with the Collector of Internal Revenue for the District of Washington and paid the tax shown thereon to be due.

2. Thereafter, the Commissioner of Internal Revenue caused an examination of that return to be made, and upon audit assessed against plaintiffs a deficiency in income tax for that year in the amount of $198.08, with interest, all of which plaintiffs paid to said Collector on October 16, 1951.

3. Thereafter, plaintiffs filed a timely claim for refund of said deficiency payment, and more than six months later they commenced this action to recover said payment, with interest.

4. At all times material, plaintiffs owned a one-fourth interest in a partnership carrying on wholesale distribution of beer under the trade name "Cammarano Brothers" in Tacoma, Washington.

5. During 1948, the partnership paid $3,545.15 to the Washington Beer Wholesalers Association, Inc., Trust Fund, plaintiffs' proportionate share of such payments being $886.29. The Trust Fund had been established on December 17, 1947, by the Association of which the partnership was a member, to help finance an extensive statewide publicity program on the part of wholesale and retail beer and wine dealers.

6. This publicity program urged the defeat of Initiative to the Legislature No. 13, which was submitted to the people of Washington in accordance with the legislation provisions of the State Constitution at the general election on November 2, 1948. That Initiative would have placed the retail sale of wine and beer exclusively in state-owned and operated stores. The ballot title of the Initiative provided:

> "An Act prohibiting the retail sale of beer and wine by any person other than the State of Washington, repealing all provisions of existing law pertaining to licensing of retail sale of beer and wine, revoking existing licenses and providing penalties."

7. The measure had previously been submitted to the state legislature. An officer of the Beer Wholesalers Association kept close track of its

progress, and personally contacted many of the legislators, urging defeat. The legislature did not act on the measure.

8. With the measure going before the people, the wholesale and retail wine and beer dealers decided to undertake a vast publicity program aimed at the people, who were to vote on the measure in November, 1948. It was decided that the program should be directed by a committee made up from the various groups and associations interested in defeat of the measure, and financed by contributions from those groups and associations and other interested parties. An Industry Advisory Committee was established to direct the program, in support of which it was funished with $231,257.10. Of that amount, $53,500.00 came from the Beer Wholesalers Association, which collected the money by assessing its members amounts based upon their volume of business. The collections were handled through a Trust Fund which was established as a separate entity to receive and disburse the assessments. The program was carried out by various types of advertising none of which had reference to the wares or members of the Association as such.

9. There was testimony to the effect that the Initiative, if passed, would have affected the wholesale business of Cammarano Brothers. However, the way in which the measure, aimed as it was at retail sales of wine and beer, would have affected the wholesale distribution of beer was not made clear. In any event, the measure was defeated.

10. As early as September 3, 1937, the Commissioner of Internal Revenue ruled that the Beer Wholesalers Association was itself exempt from federal income tax. During the period of the publicity program, that Association continued its usual activities, and collected its usual dues from its members, including Cammarano Brothers.

11. The payment made to the Trust Fund by Cammarano Brothers was for propaganda and was to defeat legislation, and therefore was neither ordinary nor necessary to the usual course of the partnership business. There was nothing wrong or evil or corrupt about spending money for this purpose. Expenditures to enlighten and inform the public with respect to initiative measures are perfectly proper and laudable.

Conclusions of Law

1. The Court has jurisdiction of the parties and subject matter of this action.

2. Plaintiffs contend that the amount paid by Cammarano Brothers to the Trust Fund should have been allowed by the Commissioner as an "Ordinary and necessary expense paid or incurred during the taxable year in carrying on" its business of the wholesale distribution of beer, under Section 23(a) (1) (A) of the Internal Revenue Code of 1939 (26 U.S.C. 1952 Ed., Sec. 23). But it is perfectly clear that the payment to the Trust Fund was entirely for propaganda, and aimed at the defeat of legislation. For both of these reasons, and without

in any way condemning the stand taken in the campaign, the payment is not deductible under that Section, according to long-standing Treasury Regulations (T.R. 111, Sec. 29.23 (o)-1) and a host of judicial decisions. See, e.g. Textile Mills Corp. v. Commissioner, 314 U.S. 326; Old Mission P. Cement Co. v. Commissioner, 69 F. 2d 676 (CA 9th); Sunset Scavenger Co. v. Commissioner, 83 F. 2d 948 (CA 9th); Roberts Dairy Co. v. Commissioner, 195 F. 2d 948 (CA 8th); American Hardware & Eq. Co. v. Commissioner, 202 F. 2d 126 (CA 4th); Revere Racing Association v. Scanlon, 137 F. Supp. 293 (DC Mass.). Plaintiffs make much of the fact that the instant publicity campaign was aimed at the people generally rather than the legislature, but no such distinction is recognized by the cited cases nor does it commend itself to reason. Certainly publicity can be directed at legislators both directly and indirectly. But more important for purposes of this case, the measure at which the instant campaign was aimed was clearly legislation, albeit subject to enactment by the people generally rather than members of a legislature.

3. Plaintiffs are not entitled to a refund of their 1948 income taxes, and their complaint must be dismissed. Judgment may be entered accordingly.

Done in Open Court at Seattle, Washington, this 24th day of July, 1956.

/s/ GEORGE H. BOLDT,
United States District Judge.

Presented and approved by:

/s/ CHARLES P. MORIARTY,
United States Attorney;

/s/ THEODORE D. TAUBENECK,
S.A.D.
Attorney, Tax Division,
Attorneys for Defendants.

Copy received:

/s/ A. R. KEHOE,

/s/ JONES & GREY,
Attorneys for Plaintiffs.

Lodged: June 13, 1956.

[Endorsed]: Filed July 30, 1956.

United States District Court, Western District of Washington, Southern Division

No. 1873

WILLIAM B. CAMMARANO and LOUISE CAMMARANO, His Wife,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

The Court having considered the evidence and the arguments of counsel and entered its Findings of

Fact and Conclusions of Law herein, it is in conformity therewith

Ordered, Adjudged and Decreed that the plaintiffs take nothing from the defendant, and that their action be and it hereby is dismissed with prejudice, and that the defendant have and recover its costs herein from the plaintiff.

Done in Open Court at Seattle, Washington, this 24th day of July, 1956.

/s/ GEORGE H. BOLDT,
United States District Judge.

Presented and approved by:

/s/ CHARLES P. MORIARTY,
United States Attorney;

/s/ THEODORE D. TAUBENECK,
S.A.D.
Attorney, Dept. of Justice,
Attorneys for Defendants.

Approved as to form:

/s/ A. R. KEHOE,
Attorneys for Plaintiffs.

Lodged: June 13, 1956.

[Endorsed]: Filed July 30, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that William B. Cammarano and Louise Cammarano, his wife, plaintiffs above named, hereby appeal to the Court of Appeals for the Ninth Circuit from the final Judgment dated July 24, 1956, and filed in the above-entitled Court on July 24, 1956.

Dated this 6th day of September, 1956.

/s/ A. R. KEHOE,
Attorney for Plaintiffs.

Receipt of copy acknowledged.

[Endorsed]: Filed September 6, 1956.

In the District Court of the United States for the Western District of Washington, Southern Division

No. 1873

WILLIAM B. CAMMARANO, and LOUISE CAMMARANO, His Wife,

Plaintiffs.

vs.

UNITED STATES OF AMERICA,

Defendant.

TRANSCRIPT OF PROCEEDINGS

Transcript of Proceedings in the above-entitled and numbered cause, before the Honorable George

H. Boldt, United States District Judge, Federal Building, Tacoma, Washington, on the 19th day of March, 1956.

Appearances:

HARGRAVE A. GARRISON, ESQ., and
A. R. KEHOE, ESQ., of
JONES & GREY,
Appeared on Behalf of the Plaintiffs.

KURT W. MELCHIOR, ESQ., and
T. D. TAUBENECK, ESQ.,
Appeared on Behalf of the Defendant.

(Whereupon, the following proceedings were had, to wit:)

Mr. Kehoe: The first matter in the Cammarano case involves a question of objections to certain interrogatories and with your Honor's permission I would like to handle those in the opening statement because they are a rather integral part of the opening statement.

The Court: One thing I was going to suggest to you, Mr. Kehoe, if you have any witnesses who would be accommodated by testifying before the lunch period I'd be glad to hear them right away and out of order as an accommodation to them. On the other hand, if it is not an accommodation, we had better proceed in the normal fashion.

Mr. Kehoe: As a matter of fact, we have only two witnesses and they are mostly here because in entering into the pretrial the Government indicated

they would like to have somebody testify as to the nature of the activity of the trade association and somebody to testify as to how the funds were expended. These two witnesses are for that purpose. I know both of them have set aside the day for the case.

The Court: Going to be here anyway?

Mr. Kehoe: I think so.

The Court: If they are going to be here anyway there is no accommodation involved. [3*]

Mr. Kehoe: We'd like to take them in order.

Before we go any further I would like to, your Honor, introduce Mr. Hargrave Garrison of our office who is associated with me in this case and who is admitted to this Court. Has never appeared here, however.

The Court: It is a pleasure to have you, Mr. Garrison.

Mr. Kehoe: Mr. Taubeneck, is it all right with you if I take up the interrogatories as part of the opening statement?

Mr. Taubeneck: That will be fine.

The Court: All right, go ahead, Mr. Kehoe.

Mr. Kehoe: Thank you, your Honor. Now, we have submitted a trial memorandum which is rather complete, your Honor. If you have had occasion to look it over my opening statement can be somewhat briefer.

The Court: I have looked it over. Now, I must perhaps go back and give it further more close at-

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

tention after I have heard the case, but I have run through it so I am generally familiar with what the case is about. In brief it boils down to the question of whether these payments to this association are deductible as a business expense or whether they are not, and that in turn is going to depend on what the character of the association was, and what its activities were and so on. Is that right? [4]

Mr. Kehoe: That is right, and whether or not, your Honor, the deductibility is precluded by the regulations which provide that sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda including advertising other than trade advertising and contributions for campaign expenses are not deductible from gross income.

The Court: Yes.

Mr. Kehoe: As a little background for your Honor, the quoted regulation is not applicable specifically to—I should say is not included in the regulations under regulation—under Section 23(a) which provides for the deductibility of expenses that are ordinary and necessary. However, the Supreme Court in the Textile Mills Case held that the Commissioner in applying this regulation to the statute under—involving the deductibility of expenses was entirely, it was entirely within his province to so apply it, and the Supreme Court has held that the quoted regulation, while technically it applies to a charitable contribution, or deduction, also applies to deductibility under Section 23(a).

Now, your Honor, in a preliminary way I might

state that we will have very little evidence on the question of whether this was ordinary and necessary. If your Honor will recall the initiative, Initiative 13 expressly provided that the sale of beer and wine would have to be made through [5] state liquor stores and on the face of it a beer wholesaler selling to beer retailers would be put out of business by the passage of such an initiative. There were some very succinct words used by the Court in the Heininger case, one of the cases cited in the memorandum, 133 Fed. (2d), 567. The Court said:

"Without this expense there would have been no business. Without the business there would have been no income. Without the income there would have been no tax. To say that this expense is not ordinary and necessary is to say that that which gives life is not ordinary and necessary."

Your Honor, I can't cover it any better than that.

The Court: Sounds like the old nursery rhyme, what was it—"For want of the nail the shoe was lost, for want of the shoe the horse was lost"—and so forth.

Mr. Kehoe: Yes. To get into the major aspects of the case as we point out in our memorandum, originally this question of the deductibility of expenditures made in connection with influencing legislation was very broadly applied on the liberal side. Your Honor might keep in mind that there are three distinct premises, one where the influence is of the closed corridor type and strictly one that is not proper in the circumstances and one that has [6] been outlawed by almost all of the decisions. The

next is a little bit of a refinement, your Honor, a program taken to the people as such in a wide publicity program to in turn influence legislators who might be in session to pass legislation of a particular variety.

Now, there is a third category, your Honor, which we think is very important and one which has been given recognition in the cases and in rulings of the Commissioner himself, and that is to the effect that a program taken to the people when the legislation is not in session and when no further action on the part of the legislation is necessary, a program taken to the people in connection with influencing their action on legislation, that is initiated with them and goes through them and becomes automatic with them and does not require legislative action by legislators as such, that any expenditure in connection with such program is entirely proper and as long as it is ordinary and necessary it is completely deductible.

I have in the memorandum decision, or in the memorandum brief, traced the early cases where in a good many instances even though an expenditure was made in connection with direct contact with legislators, where there was nothing improper about it, the courts have held that such expenditure was deductible.

Then we had the Sunset Scavenger case in our [7] own Ninth Circuit which seemed to indicate that a broad publicity program in connection with influencing the legislators operating in connection with certain proposed ordinances, that even though that program was not improper in any way in itself as

long as it was influencing legislators in connection with legislation, that that would be nondeductible.

The Textile Mills case came along shortly after the Sunset Scavenger case and there, your Honor, the case has been, by subsequent Tax Court decisions, has been given a much broader application than it really involved. The Textile Mills case involved an action in connection with a program to influence Congress to allow claims involving certain German interests. The attorney had the claims on a contingent basis and he conducted this program of direct influence on Congressmen in connection with passage of the settlement of War Claims Act of 1928. He was successful and attempted to deduct these expenses and the Court said in its opinion:

"Nor have administrative agencies usurped the legislative function by carving out this special group of expenses and made them nondeductible."

Referring to the fact they were nondeductible under the regulations involving influence of legislation. However, [8] further on in the decision the Court said:

"Contacts to spread such insidious influences through legislative halls have long been condemned."

In other words, the Court was recognizing a certain type of influence as being of the variety that would not support the deductibility of the item. However, the cases following the Textile Mills case, Mary E. Bellingrath decision in 46 B.T.A.—that is the old Tax Court when it was known as Board of Tax Appeals—gave the Textile Mills decision the very broadest application and said in it:

"They proceeded to take legitimate and unobjectionable steps through their association to forestall the passage of this legislation in its proposed form. These steps consisted of gathering facts, figures and arguments to be presented before the proper committees of the legislature, which would also be available to individual members of the association in presenting the question from the standpoint of the bottlers to their respective representatives in the legislature. All these activities were normal and in no way sinister or objectionable. They were not engaged [9] in lobbying for hire and there is no evidence that they were attempting to debauch the public morals of the legislators of Alabama. They were engaged in a proper and legal attempt to prevent injury to their business by persuading the legislature that the proposed legislation was unwise, unfair and unwarranted. We have, in the past, refused to recognize the validity of the regulation, in cases where the expenditures were, apart from regulation, ordinary and necessary business expenses. Whatever may have been our views on this subject before the Supreme Court spoke, we must now accord complete validity to the regulation."

In other words, the Court in that Bellingrath case gave the Textile Mills case a much broader application than the Textile Mills case itself would justify. And that is shown in the Lilly case where the Supreme Court in the Heininger case had occasion to specifically refer to a decision in the Textile Mills case, and as a matter of fact in that case they said

very specifically that in the Textile Mills case some types of lobbying were outlawed or disallowed. They did not say all types, and again keeping [10] in mind the very language of the Supreme Court, the Textile Mills decision is and should be much more narrowly construed than the Tax Court had indicated in the Bellingrath case.

But that is all beside the point, your Honor, because as I say, we think this case comes within a third category and one in which it has been recognized that these expenditures are deductible, one where the program is taken to the people and no legislators are involved at all. That case is pointed up—I mean that position is pointed up by the case of Luther Ely Smith which is cited rather fully in this memorandum of authorities. In that case a member of the Bar had contributed funds to a campaign to put over a constitutional amendment on selection of judges. The program of expenditure was a program taken to the people and in no way involved any action on the part of the legislature as such. Actually nothing was needed in the way of legislative action. In that case the Tax Court said very specifically—if I might find it for your Honor here:

"It should be noted that the institute engaged in no lobbying of any kind before any legislative body. No legislation was needed or involved in its plan. It contemplated an amendment proposed by the initiative of the people, voted upon at [11] a general election, and becoming self-operative thirty days thereafter without the necessity of any action or

approval by either the Legislature or the Governor."

Now, I know your Honor hasn't got the Tax Court returns and I do have it with me for your Honor's use.

The Court: Good.

Mr. Kehoe: And to go on—and this brings up the question of the interrogatories. It is our position that the Commissioner himself has recognized this third exception and where we factually come within the terms of the Luther Ely Smith case we are entitled to the deduction. In that connection the Commissioner has issued several rulings which are in point. One of those is incorporated in the data and information that we are seeking to put before this Court in the interrogatories. I might say, frankly, your Honor, that in connection with this we have been working quite closely with the office of the United States Brewers Foundation in Washington, D. C., Mr. Clinton D. Hester's office. Mr. Hester secured the rulings that we are attempting to get into evidence in this case. It was in connection with the Jackson Beverage Co. of North Carolina. We have received our copies of the ruling from Mr. Hester's office with the specific approval of the taxpayer. Now, in this ruling, your Honor, the basis of the taxpayer's position is [12] pretty well paraphrased in the protest that was filed in the case. And I just want to refer to it briefly, your Honor, and tell you why I think it is completely admissible in this case.

In the protest the taxpayer argued:

"The laws in North Carolina with respect to the sale of malt beverages provide for a company option and the process of determining whether or not the sale of the malt beverage is legal is dependent on the election by the people. The expenditures made by this company were made at a time when the legislature of North Carolina was not in session and were made for purposes of protecting the business of this corporation and not for the purpose of defeating or promoting legislation. The sum of $2,682.50 paid by the taxpayer to the North Carolina Beer Distributors Association, Cape Fear Malt Beverage Association and Cumberland County Malt Beverage Association, was for the purpose of protection with the hope of insuring the continued operation of the business."

The protest goes on and states that there had been prior [13] local options where the taxpayer was unsuccessful in his action of opposing them and they were out of business. And the very point that the taxpayer is trying to make in this case was in issue in that ruling, that of the expenditure being entirely proper because the legislature was not in session. The legislation did not need action of the legislators. It was a program taken to the people.

Now, in that connection with that matter, we have copies of the acknowledgment of the local Internal Revenue Agent in Charge of receipt of the protest. The protest also asks that the matter be referred to the ruling section in Washington and we have a subsequent letter from the Internal Revenue Agent

in Charge indicating that it had been so referred to the Bureau in Washington for ruling by the Bureau in Washington. The third letter we have attached is a letter from the Internal Revenue Agent in Charge indicating that the matter had been considered and the taxpayer's position was conceded, this after a referral to the ruling section in Washington.

Now, your Honor, we think it is quite important in this case because we are attempting to bring ourselves within a category that was recognized by the Tax Court in the Luther Ely Smith case to also show you that the Commissioner himself has recognized this particular application of facts that we are contending for in this case, and [14] that would be specifically shown in this Jackson Beverage Company ruling which we are attempting to put in by way of the interrogatories.

Now, generally I think our interrogatories are completely justified under Rule 36, under Rule 32 and Rule 26 if they are relevant. And I might say generally on a ruling of this kind in 20 American Juris Prudence it sets forth a number of cases to the effect that if the statement of an officer employee is authorized and uttered in furtherance of his official duties it is admissible against the municipal or other public body by which he is employed. And in Title 28 of the U. S. Code Annotated, Section 1733, books or records of account or minutes of proceedings of any department or agency of the United States shall be admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept.

Now, here we say frankly, your Honor, there is no privilege because the taxpayer has given us full permission to use this ruling. We say it is relevant. It shows the Commissioner's position on the very issue in our own case and we say it is completely admissible under the rules of discovery provided by the Code.

The Court: All right. Mr. Taubeneck.

Mr. Taubeneck: If the Court please, it is the Government's position these interrogatories are totally [15] irrelevant to this case.

The Court: You see, the problem presented when it is a question of relevancy is how is the Court, the Judge, trier of fact, going to know whether they are relevant or not until he has seen them? In other words, it is the old business of a snake with his tail in his mouth. There is no beginning or end to it. In order to determine whether the material is relevant or not I have got to see it and know about it, and I can't determine it ordinarily in these instances without seeing what it is. Now, if this material when examined appears to be simply a determination of a specific controversy having no general character, I mean the ruling promulgated is not or does not purport to be general in character and only deals with the particular question of that particular taxpayer in his particular, obviously it is not relevant. On the other hand, if in making that ruling some general ruling of the Commissioner is indicated, then it is possible it may be. I would think that in order to have a clear record here in the presentation of this case this material ought to be

made a part of the record and given such weight or value, if any, as the Court thinks it ought to have. Then both parties will be fully, have a full and complete record in case my ruling is reviewed. That is my view of it.

Mr. Taubeneck: Well, I believe the material that the [16] plaintiffs are trying to get in is presented with their interrogatories and they show on their face that they deal simply with a specific case.

The Court: Is that correct, Mr. Kehoe?

Mr. Kehoe: Your Honor——

The Court: Is the material that you would offer attached to your interrogatories in such a way as it is made fully a matter of record in the case?

Mr. Kehoe: Yes, your Honor.

The Court: Well, in that case it seems to me that it isn't necessary at the moment for me to pass on this but to consider it. It may be that my view of the matter is such that it isn't necessary to consider these interrogatories. In other words, I might favor the plaintiff on the general basic underlying issue without regard to this instance and in that case there is no need of my concerning myself about the interrogatories. Do you agree?

Mr. Taubeneck: I agree that is a possibility, your Honor, but I'd like to point out that if the Government is required to answer the interrogatories it simply requires authentication of correspondence between Revenue Service people in North Carolina and the taxpayer. The only way we can authenticate these for the Court is with some kind

of an order and some kind of a time lag. I have pointed this out to Mr. Kehoe and I think we are in [17] agreement that in that case the record should be kept open so that the Government could have time to see if these records still exist and if so, whether these documents are a part of the record.

The Court: The point as it seems to me, and I now recall going back to look at these interrogatories, when interrogatories are propounded the question of whether the responses and the information to be derived by the interrogatories is to be received in evidence or not, or given any weight or value as any evidentiary weight or value, is not the question on an objection to that interrogatory. On an objection to an interrogatory the only question presented is, does it appear clearly on the face of it that under no conceivable circumstances can the proposed material sought by the interrogatory be of evidentiary value. In other words, it is like the business on depositions. You can ask questions and the mere fact that they may turn out to be inadmissible in and of itself standing alone is not a basis for objection.

Mr. Taubeneck: I understand that is because they might lead to other evidence that would be admissible.

The Court: Yes.

Mr. Taubeneck: I think we are forced to take these interrogatories as requests for admission though, your Honor. They simply ask the Government to state yes [18] or no, are these documents authentic.

The Court: Yes.

Mr. Taubeneck: The first sixteen questions are of that nature. The last two questions, questions 17 and 18, I don't know what they add. They seem simply to ask whether the contents of the documents are as set out in certain particulars. So that I think it is fair to assume that the whole purpose of the interrogatories is to get these particular documents before the Court and I believe that is what Mr. Kehoe has just finished stating.

In addition I'd like to reply to the argument of Mr. Kehoe.

The Court: Yes; I don't want to cut you off at all.

Mr. Taubeneck: I just want to make one further point because I think this is probably a matter that should be kept open, but the burden of Mr. Kehoe's argument, I think, has to do with possible objection of these on grounds of hearsay. That is not our objection at all. I presume that by having Mr. Hester appear in court and make appropriate statements the fact that these things were mailed to him and were mailed and signed by a Revenue Agent, would take them into the exception to hearsay that Mr. Kehoe mentions, but our objection is on grounds of irrelevancy. I think had the Commissioner himself, to the Court or to Mr. Kehoe [19] made a statement about this case, it would be irrelevant.

The Court: About the Jackson Beverage case.

Mr. Taubeneck: Yes; or the Cammarano case.

Mr. Kehoe: If your Honor please, if I might be heard just one moment on that. Our position is that this matter in the Jackson Beverage case is not just

another ruling involving a particular taxpayer. The evidence presented in the interrogatories if proper, will show that the matter was specifically referred to the Bureau in Washington for a ruling in connection with the Jackson Beverage matter, but the matter involved the very issue we are talking about here and it was not a ruling of the Internal Revenue Agent in Charge at North Carolina. It was a ruling of the Bureau itself which is very much in point in connection with the issue involved in this case.

Mr. Taubeneck: But it was still a specific statement unpublished with respect to a single case. Now, there are perhaps countless thousands of such "rulings."

The Court: I have all that very seriously in mind because, of course, it goes without saying that we can't decide one tax case simply because of its supposed general similarity to another tax case where the ruling is in form and character and doesn't purport to go beyond the particular case. I would be well aware of that because then every tax case—why you could bring in endless other cases, six or [20] eight or ten or twelve or fifteen, more or less similar and require the Government to say what they did in various other cases. If that is all that is presented in this then clearly you don't have to answer the interrogatory. On the other hand, if there is something in the ruling made even though it was not formerly published as a regulation, I wouldn't be inclined to go quite to the extreme that you do, namely that it requires some sort of a formal adoption of regulation or formality of the thing. If the

Commissioner's office have in fact adopted a certain interpretation and have so indicated by some written document, even though it is not in the form of a regulation, I'd be inclined to think we might want it in our record, although I can well understand the hazard of doing that.

Mr. Taubeneck: The difficulty, if I can describe it, revenue service machinery, cumbersome as it may seem to the Court, the difficulty in that approach is that it is a little unrealistic because while you might characterize this correspondence, which is all it is, as in a sense a ruling, all it is is a reference of the question from the field back to Washington where there are dozens and dozens of people sitting considering problems on a little more complicated basis than they can dispose of them in the field, and in effect it is one revenue service person ruling on a single case. [21]

The Court: Well, I am going to have to look at these interrogatories more closely now that I understand fully what the point about them is. Since we have got about two minutes to the lunch hour I will do that at the lunch hour and rule immediately following with respect to the interrogatories. However whatever the ruling about the interrogatories is, we are going to go ahead and try the case and if I should rule that you must answer the interrogatories or part of them, we will give you time to do that or something of the kind. But we are going to take the proof and otherwise fully try the case this afternoon. Is that clear to you?

Mr. Kehoe: Yes, sir; we are ready.

The Court: I presume that is agreeable to both of you anyway, isn't it?

Mr. Taubeneck: Yes. Would your Honor like a short statement of the Government by way of preliminary?

The Court: About one minute to go. Do you want to go ahead, would you prefer? It is all right with me.

Mr. Taubeneck: I just want to make two very small points.

The Court: Perhaps you had better make your statement and then I will go over a few minutes and then I will recess until two. Then that will give me an ample opportunity to review the matter in advance. Go ahead. [22]

Mr. Taubeneck: I'd like to point out that I believe the Government has cited only one more case in its memorandum than we have discussed in the plaintiff's memorandum. We are in substantial agreement, I think, on the cases involved here, but we cited Revere Racing case 137 Fed. Supp. which I believe was not discussed in plaintiff's memorandum. The first statement by the Court indicated, I am afraid, a misapprehension of the case. I don't know whether it is serious or not, but I think it should be pointed out because a lot of evidence will be devoted to pointing up this fact, and that is that we don't have here the case that exists in some of the decided cases of a contribution in the form of regular dues to a regular going association.

The admitted facts and I think the evidence will

show the deduction claimed here is for a payment made apart from dues to a special fund.

The Court: Oh, yes; I over-simplified it in my remarks. No; I had that in mind.

Mr. Taubeneck: Well, the cases do differ in that respect and in another respect, but I don't think it is important. Some of the cases deal with the situation where the deductions claimed for direct expenditures by the taxpayer—I believe the Textile Mills case is of that nature—where the taxpayer by himself hired a publicist [23] and two lawyers to spread his message generally to the public as well as to Congress.

Now, that leads us into what apparently is the—in plaintiff's mind—the crucial distinction in these cases that——

The Court: In the plaintiff's mind?

Mr. Taubeneck: In the plaintiff's mind. Two distinctions. One is between bad lobbying and good lobbying. There just isn't such distinction in the cases made, your Honor. The plaintiff points out the language of the Supreme Court in the Textile Mills cases about the lobbyist spreading insidious influence. I think read in context it is perfectly clear all the Court was talking about was the fact that a private person was trying on its own behalf for private purposes to influence public, whether in the legislature or otherwise is not clear in that case. That is the second distinction that the plaintiffs see in the case that just isn't there. That is the distinction between taking the message to the legislature and taking the message to the people. The Textile Mills case itself doesn't point out in the

facts which I think shows that the Supreme Court didn't think it was important how much of the activities of the three hired people was aimed at the general electorate and how much was aimed at Congressmen, individual, at home in their constituencies, upon Capitol [24] Hill or where. It is just not clear from that case. Similarly in the Sunset Scavenger case in this circuit it is not clear whether the expenditures were entirely for publicity disseminated among the general electorate or simply aims at a city council or what not. However, in the other cases cited by the Government, one of which is in this circuit, the Old Mission Portland Cement case, the Courts point out and underscore for our benefit, I think, the fact that in those situations exactly what we have here took place and that was an attempt through publicity campaign to reach all of the voters because it was they who were going to vote on the thing involved. The Old Mission Portland Cement case considered a referendum, a statewide referendum on increased gasoline levy. So that really you have in the cases just the situation that we have here, a case of an individual or a group taking their message for their own private purposes, whether good or bad, to the public in an attempt to influence legislation. I don't think—I think it is clear from the cases that nothing turns on the distinction between legislation by the legislature in a body assembled and legislation by the people whether through a voting on an ordinance or voting on mutuel betting as in the Revere Racing Association case or in the state voting on a referendum as

Old Mission Portland Cement case or what not. There just isn't that distinction. The result is [25] that you have consistent right down to last year upholding by the Courts of a disallowance of this type of deduction when claimed, a deduction which might or might not be necessary; might or might not be connected with the taxpayer's business, but in any case is a private expenditure in this area of legislation and for that reason not allowed by the regulations.

The Court: All right, I think I have the difference of opinion between you in mind. We will recess until two o'clock.

(Whereupon, at twelve-five o'clock p.m., a recess was had until two o'clock p.m., at which time all parties being present, the following proceedings were had, to wit:)

(Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, 7 marked for identification prior to trial.)

The Court: Gentlemen, I have gone over the matter of these interrogatories and it is my opinion that the Government should not be required to answer them. I am not going into the detail of explaining why excepting that I am thoroughly satisfied that the action taken in any individual case is, of course, dependent on the particular facts and circumstances involved in that particular case and that is all that appears to be presented in this material [26] called for by the interrogatories. But more than that, gentlemen, I feel that in view of the

fact that we are dealing here with a regulation, a formal regulation adopted many years ago in full force and effect for many years with the statute being enacted and re-enacted following it, that even the Commissioner wouldn't be authorized to depart from the regulation and if in a given case it be assumed that he had, I don't think it would have any bearing or relevancy on the question of what disposition should be made in another case.

Now I do think this, that in order to give the plaintiff a full opportunity to make a record on this in case an appeal is involved, somehow or other the record ought to be completed on it. I will be glad after the conclusion of the case to consider anything that ought to be done about it, but for now I think that is all that need be said.

Mr. Kehoe: Thank you, your Honor. In that connection may I have an exception and——

The Court: Oh yes, the statute gives you one without asking for it, but you most certainly have made it plain that you take the contrary view and accordingly you automatically have an exception. And incidentally, it never bothers me to have counsel ask for an exception because if it helps to let off steam a little bit by doing so, I never resent that because I often did it myself when I thought [27] the Court was wrong.

Mr. Taubeneck: If the Court please, we'd like to clarify one thing before the plaintiff starts presenting his case.

The Court: All right.

Mr. Taubeneck: According to the pretrial order

as entered by the Court, there still is in the case the factual legal issue of whether plaintiff's payments were ordinary and necessary expenses. In checking over the argument in our trial argument, I think it is a little bit ambiguously stated and it might appear we have conceded that issue in the second paragraph of our argument. We did not mean to concede it and do not want plaintiff to rely on the possible appearance that that is a concession.

The Court: In the question presented paragraph, you mean?

Mr. Taubeneck: No, in the argument, in the second paragraph of our argument.

The Court: Well, if you would like to add something to it to express that thought more fully, it is agreeable to me.

Mr. Taubeneck: I would just like the record to say that we did not mean to indicate there——

The Court: That is right.

Mr. Taubeneck: In other words, the argument was [28] written in terms of what we assumed the evidence might well show.

The Court: All right. Now are you ready then to proceed, Mr. Kehoe?

CHESTER A. ADWEN

being duly sworn on oath, was called as a witness on behalf of the Plaintiffs and testified as follows:

Direct Examination

By Mr. Kehoe:

The Clerk: State your full name and spell your last name.

The Witness: Chester A. Adwen, A-d-w-e-n.

Q. Where do you reside?

A. 5300 E. 184th St., Seattle, Washington.

Q. Have you been associated with the Washington Beer Wholesalers Association?

A. I have, sir.

Q. In what capacity, Mr. Adwen?

A. Secretary.

Q. How long were you so employed?

A. About ten years and maybe two or three months.

Q. That would mean that you were employed since about 1944, is that correct? A. 1945.

Q. 1945? [29] A. Yes.

Q. Did you work for any like organization before you were employed by the Washington Beer Wholesalers Association?

A. I was Secretary for the Northwest Produce Association for approximately ten years and also Secretary for the Washington State Retail Grocers Association and the Seattle Retail Grocers Association.

Q. Mr. Adwen, what is the nature of the Washington Beer Wholesalers Association?

(Testimony of Chester A. Adwen.)

A. You mean the work we do?

Q. What are its activities generally?

A. The Washington Beer Wholesalers Association is organized, in 1934, primarily for the protection of our members, protection in this respect. I mean by that to say negotiations between the Liquor Board and labor unions mostly. When I took over at that time I think we had 24 labor contracts throughout the state and anything at all, Mr. Kehoe, general trade association that affected their well-being I think would be an easy way to put it.

Q. What did you say your office was with the Washington Beer Wholesale Association?

A. Secretary.

Q. Were you the Secretary of that organization in 1947 and 1948, Mr. Adwen? A. I was. [30]

Q. Are you familiar with initiative measure in the State of Washington called Initiative 13?

A. Yes.

Q. What was the Initiative 13?

A. Initiative 13 primarily would have in the opinion of the industry—I think I can safely say industry—would have made it necessary to distribute beer and wine through state liquor stores which would have automatically put the taverns and the grocery stores handling beer and wine out of business. At the same time it would undoubtedly have put at least 90 per cent of the beer wholesalers out of business. I don't say a 100 per cent for this reason. It would still probably be necessary for some of the breweries to have representatives to call

(Testimony of Chester A. Adwen.)

upon the Liquor Board to sell their merchandise and their wares, but at least 90 per cent of them would have had nothing to do so they would have gone completely out of business.

Q. Was Initiative 13 the subject of discussion and consideration by the Association in the year 1948? A. Yes.

Q. Will you explain briefly the nature of such discussions and considerations by the Association in 1948?

A. In 1948, Mr. Kehoe, we became aware that this would put our people out of business. I say "our" again bearing in mind at least 90 per cent, and that it was [31] necessary for the organization along with other organizations affected to protect themselves by raising certain amounts of money to see that we were taken care of by probably some advertising concern. That was all discussed previous in 1947 and that brought about the formation of the Industry Advisory Committee. That is what you wanted to know, sir?

Q. Yes, just generally. Did the Association raise money in connection with Initiative 13?

A. Yes. Wait a minute. Not the Association as such. We made every attempt to divorce from the Association the raising of this money for the purpose of combatting Initiative 13.

Q. Well, how was it done?

A. We explored that at some length over a period of months and consulted with the Department of—this gentlemen represents.

(Testimony of Chester A. Adwen.)

The Court: Internal Revenue?

A. (Continuing): Internal Revenue and Mr. Clark Squire, if I can mention his name. I personally talked to Mr. Squire and Mr. Woodward, Mr. Evans and Mr. Peterson.

The Court: Those are all people connected with the Bureau of Internal Revenue here in Tacoma?

The Witness: Yes, sir, that is right.

The Court: Yes.

The Witness: Mr. Evans and Mr. Peterson were [32] in Seattle, your Honor.

A. (Continuing): We tried to divulge some way or arrive at some plan whereby there would be no connection between the Association as such and the raising and disbursement of this fund. I think it was in September of 1947, about that time, that I talked to Mr. Peterson in Seattle and Mr. Lane, I am certain his name was Mr. Lane, and while they never confirmed anything in writing, they gave me their opinion as to how it should be done. And after several meetings we decided to go along with the ideas that they expressed. I don't believe we deviated one bit from the ideas they expressed and what their contention was in their opinion. I want it definitely understood they in no way spoke for the Department of Internal Revenue. It was their opinion——

Mr. Taubeneck: In that event I would have to object that the testimony of the witness about to be given would be inadmissible.

(Testimony of Chester A. Adwen.)

The Court: Yes, yes, that is right. Just tell us what was done, how you did it.

A. (Continuing): We sent out bulletins. We asked members and non-members alike, we asked them to give us a pledge that they would contribute, I believe it was a half a cent a case and three cents a barrel for all the beer they distributed in the state, and that was turned into a fund that we called the Washington Beer Wholesalers Trust Account. [33] That money was expended for the advertising and promotion of combatting Initiative 13.

Q. Now when was that money raised?

A. We started, if my memory serves me rightly, in October of 1947.

Q. Do you remember when the trust fund itself was set up?

A. Now you are asking me a good question.

Q. It is covered by the pretrial order so I won't go into that.

A. We prepared, I believe Mr. Kehoe, three resolutions that were submitted to the Seattle First National Bank. The last one they accepted. Two they refused. And then they asked us to sign a regular bank authorization. The exact date I am a little bit hazy on, but it seems to me that was set up in the month of December of 1947.

Q. Would any of this money have been raised while the legislature was in session up until March 13th I believe it was, of 1947?

A. None at all.

(Testimony of Chester A. Adwen.)

Q. Approximately how much money was raised in that campaign, Mr. Adwen?

A. We raised $62,000 as I recall, sixty-two thousand some odd dollars.

Q. Can you tell us in a general way how the money [34] was expended? A. Well——

Q. I might pinpoint that question a little more. I don't expect you to tell me how the Industry Advisory Committee expended the money. I expect you to tell me how you expended the money.

A. I think that calls for two answers, Mr. Kehoe. I said we had approximately $62,000. At the end of the campaign in 1948 we had approximately $5,000 left which would mean that I then had to account for about $8,000, is that right?

Q. Well, depending upon the other $52,000 how was that expended?

A. $53,000, Mr. Kehoe, was expended entirely through the Industry Advisory Council; I believe that is correct.

Q. You turned the money over to the Industry Advisory Council? A. That is right.

Q. Now, how was the money that was expended in 1947 and 1948 that was not turned over to the Industry Advisory Council expended? Just generally.

A. There was no money raised for the program in 1947. I mean by that January, February, March, through October. It was a Dutch treat basis. We had approximately 30 members of our organization that devoted their own time and their own money in talk-

(Testimony of Chester A. Adwen.)

ing to influential people, let's say [35] they might have been legislators, I don't know. But we all chipped in including myself. There was no money-raising campaign put on by the Association as such during the first eight, nine, ten months—that would be ten months wouldn't it, ten months of 1947.

Q. I still would like to know how the $8,000 that apparently wasn't turned over to the Industry Advisory Committee was spent.

A. That is what I thought you wanted, that is why I questioned you about it just a minute ago. In its inception in the months of January, February, perhaps March, maybe as far as in April, we had considerable mailing pieces that were turned over to our organization, Association I should say, and that $8,000 was made up of salaries to secretaries, mailing, express charges and other items. I have turned over a complete accounting to both the Department of Internal Revenue and yourself on that, Mr. Kehoe.

Mr. Kehoe: I think that is all, Mr. Adwen.

The Court: Anything else?

Cross-Examination

By Mr. Taubeneck:

Q. Mr. Adwen, this Initiative 13 you have discussed was proposed or was something similar to that proposed previous to this 1948 period to the legislature? [36] A. It was, sir.

Q. Do you recall when that took place?

(Testimony of Chester A. Adwen.)

A. That would be 1947 not 1948.

Q. I see. What form was that in when it was proposed to the legislature?

A. Practically the same form as it appeared as initiative. The legislature refused it during their session from January, February or March.

Q. Did you keep track of the initiative during that time? A. Did I keep track of it?

Q. That is right. A. Yes.

Q. On behalf of the Association?

A. You might call it that.

Q. Would you describe what you did about that initiative during that time?

A. You mean what I did personally?

Q. What you or the Association did.

A. When I left it. That calls for a little answer. When I left the Northwest Produce Association in the ten years I was with them we did considerable lobbying at Olympia. I would venture to say that I knew personally at least 75 per cent of the legislators. Whatever work I did down there was entirely on my own, sir. I received no compensation from [37] the Association, none whatever, and the same would go for the, I believe, 30 some odd men that made up the group that contacted their friends and friends of friends and so on and so forth. None of us received any compensation for it.

Q. Well now, you have described your activities with the legislators. What were they intended to accomplish, what were you trying to do?

A. Well——

(Testimony of Chester A. Adwen.)

The Court: Well in brief, you were trying to prevent the adoption of this act, weren't you?

The Witness: In brief I would say so.

The Court: Yes.

A. (Continuing): But there was a number of other things, of course, that I——

Q. This committee that you described of 30 people, when did that function?

A. That functioned almost entirely through the year 1947.

Q. Both during and after the legislative session?

A. No, it was just continued after the legislative session because the legislature refused to act on it, refused to take any action on it whatever. May I say this, sir, we were not too much concerned about the action of the legislature at any time. [38]

The Court: Just died in committee, never came out on the floor for a vote, is that what happened to it?

The Witness: Yes.

Q. Then you believed from the outset that your principal fight would be after the legislative session?

A. We were fairly sure of that.

Q. These general activities of the Association, of course they continued during 1948, did they not?

A. What general activities?

Q. The negotiations with the various commissions and boards and general activities for the well-being of the Association? A. Oh, yes, yes.

The Court: You mean the activities other than those relating to this proposed act?

(Testimony of Chester A. Adwen.)

Mr. Taubeneck: That is right.

The Court: Yes.

Q. And the activities relating to this proposed act were handled exclusively through this fund and Industry Advisory Committee?

A. In 1948, sir?

Q. In 1948. A. Yes.

Q. So that the system was established by 1948, by the beginning of 1948? [39]

A. Beginning if you mean, sir—I would say probably after March of 1948.

Q. Now you have stated that a per keg or per half levy was assessed on the members.

A. I can tell you exactly what it was if you want to know.

Q. Yes, I'd like for you to tell.

A. That is some years ago. I have to refresh my own memory.

Q. Please do.

A. "One-half cent per case, three cents for each half keg, six and one-half cents for each keg of beer distributed by me." Now this is the form if you want it, sir. You are perfectly welcome to have it.

Q. That is all right, no. And was it in that way that all the funds were taken up from the membership?

A. Yes. Funds from the membership including non-members, sir, was all on the same basis.

Q. I see.

Mr. Taubeneck: Would you show the witness Exhibit 4, please?

(Testimony of Chester A. Adwen.)

Q. (Continuing): You have been shown Exhibit 4.

Mr. Taubeneck: I think that is plaintiffs' Exhibit 4.

The Clerk: Defendant's exhibits are A, B, C.

Mr. Taubeneck: I am sorry.

The Court: What exhibit is the witness looking at now?

The Witness: I am looking at the authorization for signing and endorsing checks..

Q. That is Exhibit D? A. Exhibit D.

The Court: All right, go ahead.

Q. Now would you identify that? — A. Yes.

Q. What is it?

A. It is an authorization that was tendered the bank in setting up the Industry Advisory Council fund.

Q. Now what fund was that in relation to the other activities you have described?

A. This, sir, was the fund that was set up in which the wineries, beer wholesalers and tavern operators set up called the Industry Advisory fund. That was the fund to which Washington Beer Wholesalers contributed at various times whenever it was necessary to keep, get a little more money in the bank.

Q. I see. Now did the money that you contributed to that fund come from the trust fund that you had already established?

A. Entirely, sir. [41]

Q. So that the money came from the member-

(Testimony of Chester A. Adwen.)

ship on this assessment, went into the trust fund and then was transferred from the trust fund into this Industry Advisory Committee fund?

A. That is right, as it was needed.

Mr. Taubeneck: I would like to offer this Government Exhibit No. D in evidence.

The Court: Any objection?

Mr. Kehoe: No objection.

The Court: Exhibit D is admitted in evidence.

(Defendant's Exhibit No. D admitted in evidence.)

DEFENDANT'S EXHIBIT D

Authorization for Signing and Endorsing Checks

Whereas, the Washington Brewers Institute, the Washington State Restaurant Association, the Washington Beer Wholesalers Association, Inc., and the Washington Wine Council, all being non-profit trade associations interested in some phase of the alcoholic beverage industry, have from time to time during the past several years conferred and advised together through their authorized representatives regarding various matters of common interest, and

Whereas, the said associations have decided to contribute to and establish a joint and common fund for the purpose of defraying the cost of a public relations and educational program for the

(Testimony of Chester A. Adwen.)

Exhibit D—(Continued)

common benefit of the membership of the several associations, and

Whereas, the above-named associations have appointed the following persons as their authorized agents for the purpose of controlling said joint and common fund, the name of the association appearing after the authorized agent's name:

Gerald Hile, Washington Wine Council;

Ray Dale, Washington State Restaurant Association;

C. A. Adwen, Washington Beer Wholesalers Association, Inc.;

W. J. Lindberg, Washington Brewers Institute.

Now, Therefore, we, Gerald Hile, authorized agent for the Washington Wine Council; Ray Dale, authorized agent for the Washington State Restauant Association; C. A. Adwen, authorized agent for the Washington Beer wholesalers Association, Inc., and W. J. Lindberg, authorized agent for the Washington Brewers Institute, do hereby jointly and severally agree:

1. That the Pacific National Bank of Seattle be and is hereby selected as a depository for the funds of the authorized agents heretofore referred to and that a bank account shall be opened and kept with the said bank for said authorized agents

(Testimony of Chester A. Adwen.)

Exhibit D—(Continued)

under the following designation: "Industry Advisory Committee Fund."

2. That said bank be and is hereby authorized to honor and pay checks or other orders for the payment of money drawn in the name of "Industry Advisory Committee Fund" when signed by H. J. Durand, Secretary, and any one of the following: Gerald Hile, Agent; Ray Dale, Agent, and C. A. Adwen, Agent, and that said bank be and is hereby authorized and directod to honor, pay and charge to the above account of said authorized agents all checks and orders for the payment of money so drawn when so signed without inquiring as to the circumstances of their issue or the disposition of their proceeds, whether such checks be payable to cash or to the order of endorsed or negotiated by any of the above agents signing them, in his individual capacity or not and whether they are deposited to the individual credit of any above agent or agents signing them or of any other person or not, and without regard to any notation or memorandum made upon said checks or orders.

3. That the said bank be and the same hereby is authorized to cash for or pay to or credit to the individual account of any third person, firm, corporation or any of the above agents all checks or orders payable to the above-named fund either as payee or endorsee when the same are made so

(Testimony of Chester A. Adwen.)

Exhibit D—(Continued)

payable in the same manner as provided in paragraph 2 for signing checks or orders.

4. That the undersigned are bound by the rules and regulations governing checking accounts of said bank and by any changes, modifications or additions thereto, which rules and regulations are posted at all times in the lobby of said bank.

5. That said agents are authorized to transact any other business with the said bank incidental to the powers hereinabove granted.

6. That there shall be no obligation on the part of said bank to see to the application of funds in any case whatsoever.

7. That the foregoing authorizations and each of them, shall be continuing ones and shall not be exhausted by their exercise but shall remain in effect until said bank receives written notice signed by one of the agents to the contrary. If any person becomes interested in the joint account represented by the undersigned, the undersigned will notify the bank promptly.

8. That all prior authorizations relating to any of the above matters be and they are hereby revoked.

In Witness Whereof, we have signed this instrument this....day of January, 1948.

..... Agent

Secretary, Washington Beer Wholesalers Assn., Inc.

(Testimony of Chester A. Adwen.)

Exhibit D—(Continued)

..... Agent
Secretary, Washington Wine Council.

..... Agent
Executive Vice President, Washington State Restaurant Assn.

..... Agent
Counsel, Washington Brewers Institute.

Admitted in evidence March 19, 1956.

Mr. Kehoe: If I might ask here, your Honor. We have the pretrial which is agreed—it is like a stipulation, agreed facts. Attached to that are the plaintiffs' exhibits and the defendant's exhibits. This is one of the defendant's exhibits attached to the pretrial. Are we going to have to formally put all——

The Court: To avoid any confusion about it I think you had ought to offer the identification numbers, whatever ones you wish, both of you. We will have it in so there will be no question.

Mr. Kehoe: Could we do it all at one time?

The Court: Do it all at one time but let's finish the examination of this witness and get all the exhibits [42] attended to at a given time.

(Testimony of Chester A. Adwen.)

Mr. Taubeneck: I believe that is all the questions.

The Court: That is all, Mr. Adwen, you may step down. Let's get the exhibit matter attended to first. First Mr. Kehoe, what exhibits are you offering?

Mr. Kehoe: Your Honor, we have seven exhibits, the first being the Articles of Incorporation of Pacific Northwest Beverage.

The Court: What is the number of that?

Mr. Kehoe: Number 1.

The Court: Offered. Any objection?

Mr. Taubeneck: None.

The Court: Admitted.

Mr. Kehoe: Then we have resolution and bank authorization of the Washington Beer Wholesalers Association Trust Account.

The Court: What number is that?

Mr. Kehoe: Number 2.

The Court: Any objection?

Mr. Taubeneck: No, your Honor.

The Court: Admitted.

Mr. Kehoe: Initiative Legislature No. 13, number 3.

The Court: Any objection?

Mr. Taubeneck: No. [43]

The Court: Admitted.

Mr. Kehoe: We have Treasury Department letter dated June 15, 1949. That is number 4, your Honor.

The Court: Any objection?

Mr. Taubeneck: I think the date on that makes it irrelevant, your Honor, with respect to the status.

The Court: I will admit it for whatever value, if any, it may have.

Mr. Kehoe: Number 5, your Honor, is the resolution and bank authorization furnished the Seattle First National Bank.

The Court: Any objection?

Mr. Taubeneck: None, your Honor.

The Court: 5 is admitted.

Mr. Kehoe: Number 6, your Honor, is the Secretary of State's pamphlet on Initiative 13.

The Court: Any objection?

Mr. Taubeneck: None, your Honor.

The Court: It is admitted.

PLAINTIFFS' EXHIBIT No. 6

State of Washington

A Pamphlet

Containing

Initiative Measure No. 169

Initiative Measure No. 171

Initiative Measure No. 172

Initiative to the Legislature No. 13

Constitutional Amendments

To Be Submitted to the Legal Voters of the State of Washington for Their Approval or Rejection at the General Election to Be Held on

Tuesday, November 2, 1948

Plaintiffs' Exhibit No. 6—(Continued)

[Washington State Seal]

Compiled and Issued by Direction of
Earle Coe
Secretary of State

Ballot Titles Prepared by the Attorney General
Smith Troy
Attorney General

[Chapter 30, Laws 1917]

Initiative to the Legislature No. 13

Ballot Title

An Act prohibiting the retail sale of beer and wine by any person other than the State of Washington, repealing all provisions of existing law pertaining to licensing of retail sale of beer and wine, revoking existing licenses and providing penalties.

An Act repealing all provisions for licenses for the sale of beer and wine to be consumed on the premises, or at retail, and revoking such licenses in existence on the effective date of the Act; making the sale of wine and beer to be consumed on the premises, or at retail, a felony and providing punishment therefor; declaring an emergency and that the Act take effect immediately.

Plaintiffs' Exhibit No. 6—(Continued)

Be It Enacted by the Legislature of the State of Washington

Section 1. Declaration of Intention. Experience in the State of Washington has shown that the attempt to handle beer and wine on a different basis than that used in handling of other liquor is not successful, and that the evils consequent thereon are greater than any possible benefits to be derived therefrom. It is therefore declared to be the intention of this measure to eliminate all taverns or beer parlors in the State of Washington, and to stop the consumption of beer and wine on the premises where sold, and to have beer and wine sold at retail only as other liquor is sold under the terms and provisions of the Washington State Liquor Act (Chapter 62 of the Laws of the Extraordinary Session of 1933) as now amended.

Sec. 2. Liberally Construed. This entire Act shall be deemed the exercise of the police power of the State of Washington for the protection of the welfare, health, peace, morals, and safety of the people of the State, and all its provision shall be liberally construed for the accomplishment of that purpose.

Sec. 3. Definition of Terms. In this Act, unless the context otherwise requires, the meaning to be given to the various terms used shall be the definitions thereof set forth in the Washington State

Plaintiffs' Exhibit No. 6—(Continued)

Liquor Act (Chapter 62 of the Laws of the Extraordinary Session of 1933) as now amended.

Sec. 4. All provisions of the Washington State Liquor Act (Chapter 62 of the Laws of the Extraordinary Session of 1933) as now amended, relative to the licensing of the sale of beer or wine to be consumed on the premises where sold, or the sale thereof at retail, are hereby repealed, and from and after the effective date of this Act, beer and wine shall be sold at retail only as other liquor is sold under the terms and provisions of the Washington State Liquor Act (Chapter 62 of the Laws of the Extraordinary Session of 1933) as now amended. All licenses now in effect relating to the sale of beer or wine to be consumed on the premises where sold, or at retail, are revoked as of the effective date of this Act.

Sec. 5. Any person, other than the State of Washington, acting through the Washington State Liquor Control Board and its employees, selling beer or wine for consumption on the premises where sold, or at retail, after the effective date of this Act shall be guilty of a felony, and shall be punished by imprisonment in the State penitentiary for not more than five years, or by imprisonment in the County jail for not more than one year.

Sec. 6. All acts or parts of acts in conflict herewith are hereby repealed.

Sec. 7. If any section or provision of this Act shall be adjudged to be invalid, such adjudication

Plaintiffs' Exhibit No. 6—(Continued)

shall not affect the validity of the Act as a whole or any section, provision, or part thereof not adjudged to be invalid.

Sec. 8. This Act is necessary for the preservation of the public peace, health, and safety, the promotion of the public welfare and the support of the State Government and its existing institutions, and shall take effect immediately.

* * *

Argument for Initiative to the Legislature No. 13.

(1) A Vote for Initiative No. 13 Is a Vote to Close the Taverns and transfer the sale of beer and wine to the State Liquor stores where hard liquor is now sold. This would more effectively control an increasingly harmful situation.

(2) Unquestionably Taverns Are a Menace. They are the breeding places for immorality, crime and youth delinquency. Read the stories (of tavern-centered tragedy) in your own newspapers. Quarrels—fights—broken homes—unattended children—drunken men, women, juveniles—drunken driving. The taverns of today are far worse than the old time saloons ever were.

(3) A Tavern Is an Economic Liability to Any Community.

a. It reduces the value of adjoining property. No respectable business wants a tavern next door.

Plaintiffs' Exhibit No. 6—(Continued)

b. The average tavern patron is a poor credit risk.

c. Money spent in taverns is largely lost to essential business.

(4) Liquor Interests Term the Tavern the "Poor Man's Club." A "Club" which exploits the weaknesses of its members, making them "poorer," physically, financially, mentally and morally, is indeed a "poor" club for any person.

(5) Employment Conditions Will Be Greatly Improved by the passage of No. 13. Tavern workers temporarily unemployed will be quickly absorbed in more respectable work. Reputable concerns occupying buildings vacated by taverns will increase rather than decrease employment. Buildings vacated when 12 taverns were recently voted out near 63rd and Kimbark in Chicago, were immediately occupied by other concerns.

(6) Tavern Operators Claim That No. 13 Would Cause a Loss of Tax Income to the State. Authoritative sources reveal that it is costing our State, county and city governments more than twice as much to control and regulate the tavern and care for its victims, as the revenue received through beer and wine taxation.

(7) Some Will Say That the Passage of No. 13 Would Increase Bootlegging. This is not true! It is estimated that 18,000,000 gallons of bootleg liquor were made in the United States last year. The

Plaintiffs' Exhibit No. 6—(Continued)

Federal Government has caught from 15,000 to 20,000 bootleggers a year during the past sixteen years, according to Ethel Hubler in the National Voice. Initiative No. 13, Which Would Make Beer and Wine Available in State Liquor Stores, would tend to discourage bootlegging.

A Day of Decision Is at Hand. The Taverns Have Sinned Away Their Day of Grace. No Longer Will the Voters of the State of Washington Tolerate These Establishments Which Disgrace Men, Women and Children, and Undermine and Sabotage the Welfare of the People of This State.

Close the Taverns! Strengthen the Steele Act! Protect Our Homes and Youth!

Cut the Cost of Law Enforcement and Crime!

Vote For Initiative No. 13.

WASHINGTON TEMPERANCE ASSOCIATION,

M. A. MARCY,
President;

H. L. PATCHETT,
Secretary.

Argument Against Initiative to the Legislature No. 13

The Prohibitionists' Measure

Initiative 13 is a measure sponsored by the Prohibitionists. To get a clearer idea of the Real purpose, read the "Ballot Title" on a preceding page.

Plaintiffs' Exhibit No. 6—(Continued)

It starts out:

"An Act Prohibiting the retail sale of beer and wine. * * *" and that word "Prohibiting" is the key to the Prohibitionists' scheme. They are trying to trick you into Prohibition, step by step.

Drastic First Step Toward Prohibition

Initiative 13 is the first step. The Prohibitionists would Forbid the sale of beer and wine—not only in taverns, but Also in Restaurants and Grocery Stores. Not a Single Glass of Beer Could Legally Be Sold in the State of Washington!

Isn't That a Drastic Step Toward Full Prohibition?

Prohibition's Evils Again

What would the results be? The same as they were during national Prohibition. With sales of beer and wine forbidden everywhere except in state stores, speakeasies would spring up—followed by the bootlegger, the racketeer, the gangster, and all the vile crew who thrived on the illegal trades of Prohibition days.

And why?—only because the Prohibitionists believe it should be illegal to buy a friendly glass of beer!

The Alernative to the Legal, Licensed, Regulated Tavern Is the Illegal Dive—the filthy back-alley speakeasy and the isolated country roadhouse.

Plaintiffs' Exhibit No. 6—(Continued)

There's more to the Prohibitionists' scheme, too. If they put over Initiative 13, the resulting crime, gangsterism and corruption, would, they hope, discredit the entire present system in the State of Washington, and make their final step, complete Prohibition, so much easier.

Opposed by Sheriffs, Veterans
Labor

This is what the sheriffs of the state say:

"Initiative 13 * * * would result in the springing up of speakeasies, bootleggers, * * * would generally foster lawlessness and result in increased sales to minors through illegal sources, just as similar restrictive measures did during Prohibition."

—Washington State Sheriffs Association; Resolution Passed at Their State Convention at Everett, June 4, 1948.

This is what the Veterans of Foreign Wars say:

"Many thousands of jobs for veterans are directly and indirectly involved * * * If the present, legal sale of beer and wine by licensed retail outlets is forbidden, the inevitable result will be speakeasies, bootleggers; * * * the Veterans of Foreign Wars condemn this effort to cause a return to Prohibition conditions, and to curtail personal liberties."

—Veterans of Foreign Wars; Resolution Passed at Their Annual State Encampment at Tacoma, June 26, 1948.

Plaintiffs' Exhibit No. 6—(Continued)

This is what the Washington Federation of Labor says:

"Initiative 13 would do worse than cause unemployment. It would force many members of the A. F. of L. to work in speakeasies, bootleg joints and other crooked businesses. It would mean the loss of their membership cards because of union rules denying membership to persons engaged in illegal sale of liquors."

—E. M. Weston, President, Washington State Federation of Labor, in an Address at Spokane, June 11, 1948.

Serious Effect on the State

These are the most serious effects of Initiative 13—but there are also others. The beer and wine industry provides jobs directly for 14,000 persons in the state—jobs with an annual payroll of $35,000,000. It pays taxes of nearly 22 million dollars a year. It is a Washington business, buying more than $52,000,000 a year in Washington products.

And why are the Prohibitionists bent on passing Initiative 13?—Because They in Their Intolerance Would Deny Every Citizen of Our State the Privilege of a Friendly Glass of Beer!

Don't Be Tricked Into Prohibition!
Vote Against Initiative 13!

Filed in the office of the Secretary of State 6/25/48.

Admitted in evidence March 19, 1956.

Mr. Kehoe: Number 7, your Honor, are reproductions. It is one exhibit. It covers reproductions of some of the advertisements on initiative 13.

The Court: Any objection?

Mr. Taubeneck: None so long as there will be some description about the part they play in the campaign. [44]

The Court: All right, Exhibit 7 is admitted.

(Plaintiffs' Exhibits Nos. 1, 2, 3, 4, 5, 6, 7 admitted in evidence.)

Mr. Kehoe: Those are Plaintiffs' Exhibits.

The Court: Do you want to put yours in at the same time and have it all done at once?

Mr. Taubeneck: All right. We just have two exhibits that we want to put in.

The Court: What are the numbers or the letters?

Mr. Taubeneck: I am going to have to check on that. The second one, I believe it would be Exhibit B, and Exhibit E.

The Court: You are now offering B and E. Are there any objections to these items?

Mr. Kehoe: No objection, your Honor.

The Court: Defendant's Exhibits B and E are admitted in evidence.

(Defendant's Exhibits B & E admitted in evidence.)

DEFENDANT'S EXHIBIT E

Statement of Cash Receipts and Disbursements
Industry Advisory Committee

For the period February 1, 1948, to April 30, 1949, inclusive

Receipts		
Washington Brewers Institute (Note A)	$ 89,450.00	
Licensees Against Initiative 13	58,030.00	
Washington Beer Wholesalers Association	53,500.00	
Washington Wine Council, Inc.	25,000.00	
Retail Grocers Against Initiative 13	3,213.10	
Other Contributors	2,064.00	$231,257.10
Disbursements		
Administrative Expense		
Salaries	$ 17,520.83	
Traveling Expense	10,852.84	
Public Opinion Polls	5,733.35	
Telephone and Telegraph	1,589.68	
Rent	1,228.04	
Postage and Express	1,135.64	
Meeting Expense	1,009.28	
Furniture and Fixtures Expense	523.39	
Stationery and Printing	463.32	
Social Security Taxes	426.27	
Office Supplies and Expense	374.51	
Dues and Subscriptions	250.80	

Miscellaneous	349.80	$ 41,457.75	
Public Education and Information Expense			
Advertising:			
Newspaper	$ 69,440.77		
Radio	24,898.80		
Billboard	8,983.48		
Miscellaneous Publications	2,061.82		
Direct Mail	1,586.85		
Buses and Street Cars	960.19		
Miscellaneous	161.85		
	$108,093.76		
Printing and Typography	$ 37,039.65		
Engravings and Electrotypes	5,686.10		
Artwork	1,656.70		
Layouts	364.75		
Photostats	273.58		
Miscellaneous Printing Expense	472.05		
Public Relations Service Expense	17,850.00		
Agency Commissions	7,614.30		
Speakers and Special Service Expense	6,530.77		
Convention Expense	1,965.08		
Radio Production Expense	1,267.07		
News Release Expense	511.94		
Retail Grocers Expense	473.60	$189,799.35	$231,257.10

Defendant's Exhibit E—(Continued):

(Note A)

Washington Brewers Institute: Amount as shown above		$ 89,450.00	
Additional			
Opinion Research Corporation	$ 12,000.00		
Rental Value of Billboards	12,000.00		
Bozell & Jacobs Fee—1947	5,000.00		
Central Survey Poll	250.00	29,250.00	
Total			$118,700.00

Defendant's Exhibit E—(Continued):

Schedule of Salaries and Traveling Expense
Industry Advisory Committee

For the period February 1, 1948, to April 30, 1949

	Salaries		Traveling Expense	
Executive Director				
Harrie O. Bohlke		$10,562.50		$ 3,722.60
Fieldmen (Note B)				
Percy Willoughby	$1,455.00		$1,507.45	
Guy B. Hill	1,306.67		614.16	
Norman A. Carlson	1,225.00		1,423.88	
Victor B. Ross	933.33		554.15	
Frank L. Marshall	571.67		46.85	
H. N. Barney Jackson	455.00		261.42	
John E. Mitchell	373.33		377.81	
Wm. E. Richards	225.00	6,545.00	100.00	4,885.72
Stenographer				
Emily R. Carlson		413.33		
Miscellaneous				
H. J. Durand			$ 929.25	
Keith McCormic			400.00	
Wm. C. Speidel, Jr.			379.40	
Various Speakers			243.42	
Bozell & Jacobs, Inc.			164.45	
Wm J. Lindberg			128.00	2,244.52
Total		$17,520.83		$10,852.84

(Note B) All fieldmen were paid upon the basis of $350.00 per month except Wm. E. Richards, and the amounts indicated above reflect the length of their service.

Defendant's Exhibit E—(Continued):

Schedule of Public Relations Service Expense
Industry Advisory Committee

For the period February 1, 1948, to April 30, 1949, inclusive

Name	Amount
Bozell & Jacobs, Inc. (Note C)	$13,200.00
Wm C. Speidel, Jr.	4,000.00
Jack Gordon	500.00
Miscellaneous	150.00
Total	$17,850.00

(Note C) In addition to the total fee indicated above, Bozell & Jacobs, Inc., received Agency Commissions aggregating $7,614.30. They also received 15% commission on newspaper advertising for an estimated amount of $10,416.00.

Schedule of Convention Expense

National Alcoholic Beverage Control Association	$ 544.18
Washington State Retail Grocers Association	400.77
American Legion	324.81
Washington Newspaper Publishers Association	280.25
Labor and Industry Exposition	200.00
Veterans of Foreign Wars	124.44
Disabled American Veterans	90.63
Total	$1,965.08

The above schedule does not represent the actual cost of participating in these Conventions for the reason that additional expense for nominal amounts are reflected in the travel expense of Harrie O. Bohlke and H. J. Durand.

Admitted in evidence March 19, 1956.

The Court (Continuing): All right. Would you go forward now, Mr. Kehoe?

Mr. Kehoe: There are two other exhibits defendant is going to offer. Are you holding those back for the time being? [45]

Mr. Taubeneck: We don't intend to offer them.

Mr. Kehoe: I am a little confused, your Honor.

The Court: If you find that you want to offer them why you may do that, but we will go ahead with your witness if you have got another witness.

Mr. Kehoe: May I have Mr. Adwen back just briefly then, your Honor?

The Court: All right, come back Mr. Adwen, please, I am sorry.

Mr. Kehoe: Do I understand you are not going to put this in evidence?

Mr. Taubeneck: No.

CHESTER A. ADWEN

having been previously sworn on oath, was recalled as a witness on behalf of the Plaintiffs and testified as follows:

Redirect Examination

By Mr. Kehoe:

Q. Mr. Adwen, I will hand you for identification an instrument that is entitled "Copy of Bulletin dated November 20, 1947, Washington Beer Wholesalers Association, Inc." Would you tell me what that is, please?

A. Well, Mr. Kehoe, it is evidently a copy of a

(Testimony of Chester A. Adwen.)

bulletin I put out. I can read here. It sounds like my terminology. I wouldn't dispute it. I think it is. But it is [46] not on—of course we never use this size paper so I presume this is a copy.

Q. Would you check it through briefly and see if it—does it also cover a supplement to the bulletin?

Mr. Taubeneck: I think we are in agreement in the pretrial order on the authenticity of this.

Mr. Kehoe: That is what I am getting at, your Honor. I would like to put it in evidence. It was my understanding the Government was putting it in evidence.

The Court: Now what exhibit numbers are there? Are there some others in that same category or just this one?

Mr. Kehoe: Just this one.

The Court: What was the identification number given to it?

Mr. Kehoe: It was in the pretrial as——

The Court: That is what I am trying to find out, what identification?

Mr. Kehoe: As Defendant's Exhibit 3.

Mr. Taubeneck: C it would be.

The Court: It wouldn't be a 3 if it was defendant's.

The Clerk: They so numbered them in the pretrial order. I renumbered the defendant's and it is Defendant's Exhibit No. C.

The Court: Is that the same document the witness [47] has been referring to?

(Testimony of Chester A. Adwen.)

Mr. Kehoe: Yes.

The Court: You are offering C now, are you?

Mr. Kehoe: I am offering C as my exhibit, your Honor.

The Court: I understand that. Any objection?

Mr. Taubeneck: Yes, there is, your Honor.

The Court: What basis?

Mr. Taubeneck: There is hearsay in this document along the same lines that the witness attempted to testify to before about conversations with the Revenue Service. If it were offered for some limited purpose we might——

The Court: I will receive C, Defendant's Exhibit C now offered as a Plaintiffs' Exhibit. It is admitted in evidence for whatever weight and value it may have.

(Defendant's Exhibit C, offered as Plaintiffs' Exhibit, admitted in evidence.)

Mr. Kehoe: That is all, Mr. Adwen.

The Court: That is all, Mr. Adwen.

(Witness excused.) [48]

HERBERT J. DURAND

being first duly sworn on oath, was called as a witness on behalf of the Plaintiffs and testified as follows:

Direct Examination

By Mr. Kehoe:

The Clerk: State your full name and spell your last name.

The Witness: Herbert J. Durand, D-u-r-a-n-d.

Q. Where do you reside, Mr. Durand?

A. 1902 Bigelow Avenue North, in Seattle.

Q. Where do you work?

A. In the Olympic Hotel in my office.

Q. Who is your employer?

A. The Washington Brewers Institute.

Q. And what is your position with the Washington Brewers Institute?

A. Secretary Manager.

Q. How long have you been employed by the Washington Brewers Institute?

A. Since January 1, 1935.

Q. How long have you been employed as Secretary Manager?

A. Since January 1, 1935.

Q. Just tell me generally what is the Washington Brewers Institute, what does it do? [49]

A. Well, it is a trade association in the usual respect.

Q. And by that you mean what?

A. Performing the customary trade association activities. If you wish me to elaborate on that——

(Testimony of Herbert J. Durand.)

Q. I would like some elaboration.

A. Well, the function of Washington Brewers Institute at least is to maintain contact with the National Associations and act as liaison with the federal control authorities and the Washington State Liquor Control Board to assemble, compile and disseminate information that is pertinent to the industry.

Q. Mr. Durand, are you familiar with an initiative measure in the State of Washington, an initiative entitled Initiative 13? A. Yes, sir.

Q. Was Initiative 13 the subject of discussions and consideration by your organization in 1947 and 1948? A. Yes, sir.

Q. What generally was the nature of such discussions and considerations?

A. Well, the apprehension that you can visualize would occur for a matter of such great importance to our industry.

Q. Did they determine any policy in connection with [50] Initiative 13?

A. Not until it became a definite issue.

Q. When was that?

A. After the legislature had failed to take action.

Q. Did the Washington Brewers Institute raise any money in connection with Initiative 13?

A. Yes, sir.

Q. When was that?

A. Well, not that I recall exactly. I would say, however, either one or both of November and December, 1947.

(Testimony of Herbert J. Durand.)

Q. How much was raised approximately?

A. We made a special assessment of $60,000.

Q. And how was it expended? By that I don't mean how the industry——

A. By contributions to the Industry Advisory Committee.

Q. And——

A. May I make one observation?

Q. Go ahead.

A. It has been mentioned as Industry Advisory Council on numerous occasions here, but the correct name was Industry Advisory Committee.

Q. When was the Industry Advisory Committee set up approximately?

A. Well, somewhat formally about the first of January, 1948. And please don't misunderstand the term [51] "formally." It was an informal organization. It was not incorporated.

Q. What was your position on it?

A. I was a Secretary.

Mr. Kehoe: May I have Defendant's Exhibit E?

Q. Mr. Durand, I will show you Defendant's Exhibit E, a statement of cash receipts and disbursements by the Industry Advisory Committee. Would you kindly identify that, please. Is that the accounting for the expenditure of the fund over to the Industry Advisory Committee?

A. That is true.

Q. And were the brewers, Washington Brewers Institute funds, turned over to that committee and are those included in that report?

A. That is right.

(Testimony of Herbert J. Durand.)

Mr. Kehoe: I believe that is all, your Honor.

The Court: Anything further from Mr. Durand?

Mr. Taubeneck: Yes, your Honor.

The Court: All right, go ahead.

Cross-Examination

By Mr. Taubeneck:

Q. Are you aware of the use that was made by the Industry Advisory Committee of these funds?

A. Yes, sir. [52]

Mr. Taubeneck: Would you show the witness Defendant's Exhibit B.

Q. Was this one of the publications put out by you of those funds? A. Yes, sir.

Q. Is that typical of the publications you put out?

Mr. Kehoe: Your Honor, I object to that. That is calling for a rather—for a conclusion on the part of the witness which I don't think he is qualified to make.

The Court: Well if so, the witness can tell us that.

A. What was your question?

The Court: The question is, is this Exhibit B typical of the type of material that was put out?

A. (Continuing): Well, I'd rather not go so far as to say typical. I don't know what you mean exactly by the word "typical."

(Testimony of Herbert J. Durand.)

Q. Well, what other types of advertising were put out?

A. Well, the principal activity was newspaper advertising and radio broadcasting. There were large quantities of literature distributed through various channels.

Q. Those were the three forms of advertising used?

A. I would say almost entirely. There might have been a few exceptions. [53]

Q. Was anything else done beside advertising?

A. This was a special activity.

The Court: You mean Exhibit B?

The Witness: Well, as evidenced by the signature on the back.

The Court: I mean you are referring to Exhibit B, are you, Mr. Durand?

The Witness: Yes, sir; yes, sir.

The Court: All right.

Q. Now are the reproductions inside there the sort of thing that was done in your newspaper advertising?

A. No, they were not. These are reproductions of news articles that appeared in other sections of the United States, but they were not used in advertising, I don't believe.

Q. What besides advertising did the Industry Advisory Committee handle?

A. May I have that Exhibit B to refresh my memory?

The Court: Yes, of course.

(Testimony of Herbert J. Durand.)

A. (Continuing): This financial statement is broken down in considerable detail and shows the type of advertising. Billboard I neglected to mention, miscellaneous publications and some direct mail, streetcar cards and all that sort of thing.

Q. You mean beginning print and topography?

A. That is right. [54]

Q. And so on. That was all in it, all to the advertising? A. That is right.

Q. Did any of this advertising to your knowledge urge people to drink, drink anything in particular? A. No, sir.

Q. Did it urge them to patronize anybody in particular?

A. No, sir, I wouldn't believe so.

Mr. Taubeneck: I believe that is all.

The Court: All the material was directed toward, discouraging, if I may use that term, adoption of an act similar to that which the legislature had declined to act on, is that right?

The Witness: If your Honor, would you permit me to state it in my own way?

The Court: I'd be glad to have you.

The Witness: It was directed as a means of educating the public as to the nature of the initiative measure which they would otherwise not know.

The Court: All with the view of procuring its non-adoption?

The Witness: That is right.

The Court: I believe that is all, Mr. Durand, thank you.

Mr. Kehoe: The plaintiff rests. [55]

(Witness excused.)

The Court: The Government?

Mr. Taubeneck: The Government rests, your Honor.

The Court: All right. Are you ready to present your argument?

Mr. Kehoe: Yes, I am, your Honor.

The Court: Go ahead.

Mr. Kehoe: As I indicated in the opening statement we are dealing here with a regulation and not a statute. However the regulation has been in effect for a number of years and Congress has not seen fit to eliminate it so it has been given a lot of force and effect in the decisions. It is not a regulation under the particular statute that we are involved with, that of ordinary and necessary business expense but again court decision has indicated that the Commissioner's position that the regulation applicable under that section has been upheld. That was the Textile Mills decision in the Supreme Court, your Honor.

Now we take the position that under the factual situation involved in this case there has been a recognition that expenditures of this type are entirely deductible. The only case directly in point is that of Luther Ely Smith in the Tax Court, your Honor, where the Court held that as long as there was no legislation before legislators and the program was taken directly to the people in connection with legislation [56] or a matter that would become effective without any action on the part of

legislators that the expenditure would be entirely deductible.

Now getting into the cases that did involve legislation before legislators as I have indicated in our memorandum brief, originally the Courts were quite liberal in allowing the expenditure. In the early cases unless it were a matter that was against public policy in the form of illicit influence on legislators as such, the expenditure was allowed as a deduction as long as it was ordinary and necessary. Then we had the Ninth Circuit case in Sunset Scavenger where the Court held that even though it involved a program taken to the people, as long as it involved an indirect influence on the legislators who had to act in connection with the matter, with the measure, that the regulation was broad enough to include the deductibility of the item. Later on we had the Textile Mills security decision in the Supreme Court and following that the decisions construed the Textile Mills case as being broad authority for the proposition that not only would you have to have illicit transactions involved to preclude the deductibility but activity that was perfectly lawful and yet was an influence on legislators as such, that would be precluded.

Now as we go on to point out, your Honor, in the memorandum brief, I think those cases following the Textile [57] Mills decision gave it too broad an interpretation and that is borne out by the decision of the Supreme Court itself in the later case involving the Lilly Co., which involved a ques-

tion of the deductibility of certain kick-backs which the opticians had been making in connection with the sale of glasses. The Supreme Court of the United States said that in connection with that Lilly decision that they had granted certiorari to review their seemingly inconsistent positions in a case called the Heininger case which involved a mail fraud contest, question of deductibility of expenses in connection with contesting a mail fraud matter by a practicing dentist, and the Textile Mills decision which is the one we are talking about here. They reviewed the Textile Mills decision and they reviewed the Heininger case and they held in connection with the kick-backs that they were deductible in the Lilly case because they didn't violate any matter of public policy.

They pointed out specifically in several states, I believe North Carolina was one of them, and in a footnote they point out that in the State of Washington there were specific statutes that outlawed the kick-back practices and they indicated that if the expense was involved in those particular states where there was a statutory prohibition on that type of transaction, then the items would not be deductible for federal income tax purposes. But they [58] held that, in this case while it may not have been the best thing from a public policy standpoint, there was no, nothing generally by way of statute that precluded them and they allowed them as a deduction. And as a matter of fact it is important in this case, your Honor, because not only are these activities that we are concerned with

here not precluded by state statute, but they are actually fostered by state statute. Attached to our brief, your Honor, are provisions of Washington law providing for, in the case of an initiative of this kind, providing for the arguments for and against to be publicized by the Secretary of State's office in a pamphlet, and we have a copy of the pamphlet in evidence here pointing out the benefits or giving publicity on the arguments on either side of these initiative measures so the public can make an adequate selection. That was what was followed here. You will find in the pamphlet one of the arguments of the Industry Advisory Committee reproduced and that was reproduced at the expense of the Industry Advisory Committee, but it was circulated by the Secretary of State at the cost to the state. In other words, the state financed the distribution of that.

But to get back to Textile Mills case and the discussion of the Textile Mills case in the Lilly case which is the later case discussing the Heininger case and the Textile Mills case. In that case the Supreme Court referred to the [59] Textile Mills case and the Heininger case in this language.

They said:

> "In the Textile Mills Corporation vs. the Commissioner, 314 U.S., 326, this Court accepted an interpretation of that section by a Treasury regulation which disallowed the deduction of certain expenditures——"

Now notice the word "certain."

"——of certain expenditures for lobbying purposes. In doing so the Court referred to the fact that some types of lobbying expenditures have long been condemned by it and that the interpretive regulation had itself been in effect many years with congressional acquiescence. The instant case does not come within that precedent."

And again keep in mind, your Honor, the language I quoted before from the Textile Mills decision to the effect that the Court there specifically said contacts to spread such insidious influence through legislative halls have long been condemned. In other words, they were dealing there with lobbying in connection with a bill on the war claims of German interests. The attorney had it on a contingent fee basis. He hired several lawyers to argue with congressmen. [60] The contact with the legislative body, with Congress, was direct, and that was not the type of expenditure that would qualify under either the indirect influence on legislators through a publicity program taken to the people or a program taken to the people where the legislation would have been effective without any action on the part of the legislators. And I believe, your Honor, that if this question came up today under these later decisions—another decision of the Supreme Court is that of Rumely where the Court, the lower Court used this expression: The question involved expenditures in connection with certain pamphlets on national affairs which Mr. Rumely distributed to the public to influence the public opinion in connection with congressional

action and the question was whether or not that was indirect lobbying, and in the lower court the Court pointed out that Congress could not control such activities and that rather than being bad so-called indirect lobbying, influencing or encouraging, promoting or retarding legislation through pressure on public opinion, pointed out that that was good. The Supreme Court affirmed the lower Court in that position in U. S. v. Rumely, 345 U.S., 41.

As I say, I think the decisions have become a little more realistic and there would be a recognition that in the case of influence brought through public pressure, through a program taken to the public indirectly through [61] the legislators, I think that that would not be condemned, your Honor, under the present decisions. In any event I think the one exception where there is no action before any legislature and where there is no direct or indirect influence on the legislators themselves, I think that is clearly recognized. It is recognized especially in this Luther Ely Smith case and the Robert Gary Co. case where it was specifically pointed out petitioners have cited several cases as authority for allowing this deduction as a business expense which we think inapplicable. And they go on and say in Luther Ely Smith, 3 Tax Court 6396 it held no legislation was involved inasmuch as an amendment to the constitution for the State of Missouri was voted by the people and became self-operative without approval of the legislature. In the Luther Ely Smith case itself they drew the definite distinction that the program was a program

taken to the people. It in no way involved an action that was pending before legislators needing further action by the legislators as such. It was a program of publicity taken to the people in connection with a measure that would become operative by the action of the people. As in the Rumely case there is nothing against public policy in that, and bear in mind, your Honor, there is a substantial amount of money that has been spent here. On the face of it it is clear that it was a business expense. Non-members of the [62] Association were contributing on a percentage basis as well as members. It is clear they did, from their own standpoint they considered this a business expense. If it is disallowed to them as a deduction it means not only that they paid a hundred per cent for the expenses involved but they are paying, they will have to pay an additional fifty-two per cent because of it being disallowed as a tax deduction. And again bear in mind, your Honor, the statement from the Heininger case. Without this expense there would have been no business. Without the business there would have been no income. Without the income there would have been no tax. To say that this expense is not ordinary and necessary is to say that which gives life is not ordinary and necessary.

We submit, your Honor, that the regulation is designed to preclude an expense that is something that is to be discouraged. Where you have the necessity of the expense and you don't in any way come under the terms of the prohibition contained in the regulation, certainly as a matter of equity it

should be allowed as a deduction and we believe under the decisions there is one hundred per cent support for the allowance of the deduction. The Luther Ely Smith case is the only one in point. There is the possibility of the McClintock-Trunkey decision having application here, your Honor, because it involved a member of the Washington Beer Wholesalers Association. It involved dues paid to the [63] Washington Beer Wholesalers Association during the year 1948. We have the record of the case, your Honor, and we have made reference to it in the memorandum of authorities.

The Court just didn't have the evidence before it. They had—the evidence didn't even show whether the matter was before the legislature; as a matter of fact the bylaws, or rather the Articles of Incorporation of the Washington Beer Wholesalers Association were not put in evidence. The transcript of the record went to the Circuit Court of Appeals, your Honor, on another point and was reversed. The point on the question of the deductibility of the dues paid to the Washington Beer Wholesalers Association during that year was not taken up. The record on the issue involved in this case is about three and one-half pages long, your Honor, and it was our intent and we would like to put the entire record into the evidence in this case for your Honor to see the inadequacy of the record on the points involved here, and with Government counsel's permission I'd like to offer it now as a matter of fact.

Mr. Taubeneck: It looks official enough but I don't know that it is necessary. We are not relying on this case.

The Court: Which case are you referring to?

Mr. Kehoe: McClintock-Trunkey decision, your Honor. [64]

The Court: Well, I think it would be extraordinary to make a statement in the record in another case in the Circuit Court an exhibit in this case. You can argue from it if you want, but I don't think it is appropriate to make it an exhibit.

Mr. Kehoe: Your Honor, I submit that we have examined the record in the other case. We have examined the brief of the Government in the other case and the brief of the taxpayer and the Articles of Incorporation of the organization were not put in. The reference to whether or not this was a matter before the legislature was inadequate. The matter was taken on the deposition of the president of the McClintock-Trunkey Co., Mr. Franklin F. Trunkey, and he discussed the activity of the Washington Beer Wholesalers Association in connection with the Initiative 13 matter and he clearly indicated he wasn't sure whether or not it was before the legislature at the time, and as a matter of fact, indicated he wasn't thoroughly familiar with the normal activities of the Washington Beer Wholesalers Association. We feel that the McClintock-Trunkey decision while it is a decision in the Tax Court, is certainly distinguishable from the fact in this case when all of the facts are known.

(Whereupon, the Court gave his oral opinion, a transcript of which was previously furnished.) [65]

Certificate

I, Adele U. Douds, official court reporter for the within-entitled court, hereby certify that the foregoing is a full, true and correct transcript of matters therein set forth.

/s/ ADELE U. DOUDS.

[Endorsed]: Filed May 23, 1956.

DOCKET ENTRIES

1955

Mar. 15—Filed Complaint.

Mar. 15—Issued Summons and 4 cop. S.&C.

Mar. 23—Filed Marshal's Ret. on Sum. (on U.S. Atty. and by reg. mail on Atty. Gen.)

May 20—Filed Answer.

Oct. 21—Passed for later assign.

Nov. 28—Set for trial Mar. 12th—counsel notified.

1956

Feb. 21—Filed Interrog. of Pltf. propounded to deft.

Feb. 28—Filed Objection of Deft. to Pltf's. Interrog.—Affid. Mail.

Mar. 6—Filed Pltfs' Trial Memo—Copy to Law Clerk.

Mar. 6—Hear. re Obj., 3/12/56—9:30 a.m.

Mar. 19—Filed Deft's. Trial Memo.—Memo. in sup. Obj. to Interrog.

1956

Mar. 19—Filed & Ent. Pretrial Order.

Mar. 19—Enter record of trial; Court; Judge Boldt, presiding Court orally finds for deft.

Mar. 28—Filed Reporter's Transcript of Court's oral Decision.

May 23—Filed Reporter's Transcript of Proceedings of 3/19/56.

June 13—Lodged Govt's. proposed F & C—Lodged Govt's. proposed Judgm.

June 13—Lodged Pltfs'. proposed Findings of Fact and Conclusions of Law.

June 13—Filed Pltf's'. Obj. to Deft's. proposed F & C.

July 10—Counsel notified Present. F & C & Judgm. at Sea. 7/16/56—10 a.m.

July 10—Filed Notice, U.S., of present. F & C & Judgm.—Aff. Mail.

July 16—Present. F & C & Judgm. passed to later, Seattle.

July 24—Ent. record hear. Obj. to proposed F & C and Judgm.

July 24—F & C signed by Judge Boldt but not to be entered until p. 3-3a retyped and substituted; judgm. not be entered until F & C entered.

July 30—Filed Pltf's. Offer of Proof.

July 30—Filed & Ent. Findings of Fact and Conclusions of Law.

July 30—Filed & Ent. Judgment; Pltfs'. cause dismissed; deft. to recover costs.

Aug. 3—Filed Cost Bill, U.S. ($20.00)—Affid. of Mail.

1956

Sept. 6—Filed Transcript of Proceedings (of 3/19/56).

Sept. 6—Filed Transcript of Court's Oral Decision.

Sept. 6—Filed Notice, Pltfs., of Appeal—Cop. del'd to U. S. Atty.

Sept. 6—Filed Cost Bond on Appeal.

Sept. 6—Filed Pltfs'. Designation of Contents of Record on Appeal.

Nov. 5—Record on Appeal (orig. pleadings & exhs.) sent to Cir. Ct., via air mail.

Nov. 9—Filed Copy letter, Clerk, Cir. Court to Jones & Grey: Applic. for ext. time received; extension granted by Chief Judge Denman, Cir. Ct. (to 11/12/56).

[Endorsed]: Filed January 16, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the above-entitled Court, do hereby certify that pursuant to the provisions of Rule 75(o) of the Federal Rules of Civil Procedure as amended, and Subdivision 1 of Rule 10 as amended, of the United States Court of Appeals for the Ninth Circuit, I am transmitting here-

with all of the original papers, pleadings and exhibits in the above-entitled cause, pursuant to the Designation of Contents of Record on Appeal of Plaintiffs, and the said papers, pleadings and exhibits herewith transmitted constitute the Record on Appeal from that certain Judgment of the above-entitled Court, filed and entered on July 30, 1956, to the United States Court of Appeals for the Ninth Circuit at San Francisco, California, and are identified as follows:

1. Complaint (filed March 15, 1955).
2. Summons, with Marshal's Return of Service thereon, (filed March 23, 1955).
3. Answer (filed May 20, 1955).
4. Interrogatories Propounded to Defendant (filed February 21, 1956).
5. Objections to Plaintiffs' Interrogatories (filed February 28, 1956).
6. Affidavit of Mailing Objections (filed February 28, 1956).
7. Plaintiffs' Trial Memorandum (filed March 6, 1956).
7a. Defendant's Trial Memo.
8. Memo in support of Objections to Interrogatories (filed March 19, 1956).
9. Pretrial Order (filed and entered March 19, 1956).
10. Reporter's Transcript of Court's Oral Decision (filed March 28, 1956).
11. Plaintiffs' proposed Findings of Fact and Conclusions of Law (lodged June 13, 1956).

12. Reporter's Transcript of Proceedings (of March 19, 1956) (filed May 23, 1956).

13. Plaintiffs' Objections to Defendant's Proposed Findings of Fact and Conclusions of Law (filed June 13, 1956).

14. Notice of Presentation of Defendant's proposed Findings of Fact, etc. (filed July 10, 1956).

15. Affidavit of Mailing Notice of Presentation (filed July 10, 1956).

16. Offer of Proof (filed July 30, 1956).

17. Findings of Fact and Conclusions of Law (filed and entered July 30, 1956).

18. Judgment (filed and entered July 30, 1956).

19. Memorandum of Costs (filed August 3, 1956).

20. Affidavit of Mailing of Cost Bill (filed August 3, 1956).

21. Notice of Appeal (Plaintiffs') (filed Sept. 6, 1956).

22. Cost Bond on Appeal (filed September 6, 1956).

23. Designation of Contents of Record on Appeal (of Pltfs'.) (filed September 6, 1956).

I do further certify that as part of the Record on Appeal I am transmitting herewith the following original exhibits admitted in evidence in the trial of the above-entitled Cause, to wit:

Plaintiffs' Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, and

Defendant's Exhibits Nos. A, B, C, D, and E.

I do further certify that the following is a true and correct statement of all expenses, costs, fees and

charges incurred in my office on behalf of the parties hereto for the preparation of the Record on Appeal in this cause, to wit: Notice of Appeal, Plaintiffs': $5.00, and that the said fee has been paid to the Clerk of Plaintiffs.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court at Tacoma, Washington, this 5th day of November, 1956.

[Seal] MILLARD P. THOMAS,
Clerk;

By /s/ E. E. REDMAYNE,
Deputy.

[Endorsed]: No. 15350. United States Court of Appeals for the Ninth Circuit. William B. Cammarano and Louise Cammarano, His Wife, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Southern Division.

Filed: November 6, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 15350

WILLIAM B. CAMMARANO and LOUISE CAMMARANO, His Wife,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON APPEAL

Appellants hereby designate the following Statement of Points on which they intend to rely in their appeal from the judgment of the United States District Court, District of Washington, Southern Division, made and entered July 30, 1956, in Docket No. 1873 of said Court:

I.

The District Court erred in determining that Treasury Regulations III, Section 29.23(o)-1, was applicable to the expenditures of plaintiffs, which expenditures were incurred in connection with measures voted upon by the people.

II.

Even if Treasury Regulations III, Section 29.23 (o)-1, be applicable to expenditures incurred in connection with measures voted upon by the people, the District Court erred in determining that said Regulation as applied to plaintiffs' expenditures was a

valid exercise of the rule-making power of the Commissioner of Internal Revenue.

III.

The District Court erred in failing to determine that plaintiffs' expenditures, which expenditures were made to preserve the very life of plaintiffs' business, as a matter of law were ordinary and necessary expenses paid or incurred during the taxable year in carrying on plaintiffs' business.

IV.

The District Court erred in determining that Treasury Regulations III, Section 29.23(o)-1, either as applied to expenditures incurred in connection with measures voted upon by the people or as applied to expenditures made to preserve the very life of plaintiffs' business, had the force of law.

/s/ WALTER HOFFMAN,
Counsel for Appellants.

Affidavit of service by mail attached.

[Endorsed]: Filed November 21, 1956.

[fol. 134] IN UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

* * * * * * *

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
June 11, 1957 (Omitted in printing)

[fol. 135] IN UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Before: ORR, POPE and FEE, Circuit Judges.

MINUTE ENTRY OF ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT—July 8, 1957

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the Clerk, and that a Judgment be filed and recorded in the minutes of the Court in accordance with the opinion rendered.

[fol. 136] IN UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 15,350

WILLIAM B. CAMMARANO and LOUISE CAMMARANO, His Wife,
Appellants,

v.

UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court for the Western District of Washington, Southern Division.

OPINION—July 8, 1957

Before: ORR, POPE, and FEE, Circuit Judges

ORR, Circuit Judge:

Appellants, partners in a wholesale beer distributing concern in Tacoma, Washington, made a contribution to the Washington Beer Wholesalers Association, Inc., Trust

Fund. The Trust Fund had been established December 17, 1947, to carry on an extensive state-wide publicity program, directed by an Industry Advisory Committee, on behalf of wholesale and retail beer and wine dealers to defeat proposed initiative legislation in the State of Washington. The measure, if enacted into law, would have placed the retail sale of wine and beer exclusively in state owned and operated stores.[1]

The Association assessed its members amounts based upon their volume of business. The funds received from [fol. 137] the contributions, appellants' contribution included, were used in an effort to defeat the initiative legislation.

On their income tax returns appellants claimed a deduction for the contribution made as an ordinary and necessary business expense within the meaning of § 23(a)(1)(A), Internal Revenue Code of 1939.[2] The Commissioner of Internal Revenue disallowed this deduction on the ground that the contribution was used for lobbying purposes and the promotion or defeat of legislation, and therefore within the prohibition contained in Treasury Regulations 111, § 29.23(o)-1, in force and effect at the time the payment was made. Following payment of the assessed deficiency and a claim for refund, this suit for refund followed.

The regulation reads:

Sec. 29.23(o)-1. *Contributions or Gifts by Individuals.*—

* * * * * * *

[1] The ballot title of the Initiative provided:

"An Act prohibiting the retail sale of beer and wine by any person other than the State of Washington, repealing all provisions of existing law pertaining to licensing of retail sale of beer and wine, revoking existing licenses and providing penalties."

[2] Sec. 23 DEDUCTIONS FROM GROSS INCOME

In computing net income there shall be allowed as deductions:

(a) EXPENSES.—

(1) TRADE OR BUSINESS EXPENSES.—

(A) In General.—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, * * * *

> Sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda, including advertising other than trade advertising, and contributions for campaign expenses, are not deductible from gross income.

* * * * * * * * *

The field encompassing the force and effect of the lobbying regulation set out above has often been plowed; but there exists no straight furrow which leads unerringly to the proper solution of all cases. The regulation has quite often been held to preclude deductions made for moneys spent to defeat legislation.[3] Of course, the particular facts of each case govern.

[fol. 138] Unquestionably the regulation is broad enough to exclude deductions for any and all sums spent for lobbying and the promotion or defeat of legislation, and the Government insists that the courts have sustained the validity of the regulation in that broad sense. The case of Textile Mills Corp. v. Commissioner, 1941, 314 U.S. 326, is relied on by the Government.[4] It is argued by appellants, with some force, that *Textile Mills*, as an authority, should be restricted to the facts of that particular case, and that the ban against deductions of amounts spent for lobbying as ordinary and necessary expenses is valid only where they

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[3] See Textile Mills Corp. v. Commissioner, 1941, 314 U.S. 326; Sunset Scavenger Co. v. Commissioner, 9 Cir., 1936, 84 F.2d 453; Revere Racing Assn. v. Scanlon, 1st Cir., 1956, 232 F.2d 816; American Hardware & Eq. Co. v. Commissioner, 4 Cir., 1953, 202 F.2d 126, cert. denied 346 U.S. 814 (1953); Roberts Dairy v. Commissioner, 8 Cir., 1952, 195 F.2d 948, cert. denied, 344 U.S. 865 (1952).

[4] In *Textile Mills*, the Supreme Court held that the expenses of lobbying and propaganda, paid by a corporation employed by certain German textile interests to secure legislation from Congress authorizing the recovery of German properties seized during the First World War, were not deductible. The Court there related the lobbying regulation to ordinary and necessary business expenses, and rejected the contention that the limitation was not applicable to such expenses because it was included as a regulation under § 23(n), Internal Revenue Code of 1939, but was not specifically included as a regulation under § 23(a) of the Act.

arise "from that family of contracts to which the law has given no sanction." 314 U.S. at 339. However, other language in *Textile Mills* characterizes the words "ordinary and necessary" as used in the statute, as not being "so clear and unambiguous in their meaning and application as to leave no room for an interpretative regulation." 314 U.S. at 338. We think it may reasonably be gathered from a reading of *Textile Mills* that the Commissioner, in segregating sums paid for lobbying as non-deductible as ordinary and necessary business expenses, acted within the proper exercise of his rule-making power.

This court in the case of Sunset Scavenger Co. v. Commissioner, 9 Cir., 1936, 84 F.2d 455, decided prior to *Textile Mills*, held that an association of scavengers in San Francisco could not deduct expenses incurred in combatting an ordinance which would have seriously affected their business. In its decision this court relied on the doctrine of statutory re-enactment in the face of a known administrative interpretation to sustain the lobbying regulation, as well as the latent ambiguity of the phrase, "ordinary and necessary business expenses."

[fol. 139]. In American Hardware v. Commissioner, 4 Cir., 1953, 202 F.2d 126, cert. denied, 346 U.S. 814 (1953), the regulation was applied to disallow deductions for payments by a hardware company to the National Tax Equality Association, which issued propaganda on the subject of tax revision. The court there held that *Textile Mills* controlled, rejecting contentions that *Textile Mills* was limited to the non-deductibility of items which are against public policy or are morally wrong, and that the lobbying regulation was inapplicable to ordinary business expenses since not specifically appended to § 23(a).

In Revere Racing Association v. Scanlon, 1 Cir., 1956, 232 F.2d 816, the regulation was again applied to disallow payments by a dog racing company for the defeat of a public referendum on the question of whether pari-mutuel system of betting at dog races would be continued in the county. There, the court rejected the contention that the regulation was inapplicable where the measure was before the people upon referendum, rather than before a legislature.

Appellants cite Commissioner v. Heininger, 1943, 320 U.S. 467, and Lilly v. Commissioner, 1952, 343 U.S. 90, both decided subsequent to *Textile Mills*, as limiting the scope of *Textile Mills* to payments violating public policy.

In Commissioner v. Heininger, a mail order dentist was allowed a deduction as ordinary and necessary business expenses for legal fees incurred in an unsuccessful contest of a fraud charge lodged by the Postmaster. In Lilly v. Commissioner, an optician was allowed business expense deductions for kick-backs to a prescribing physician, where the practice was customary.

Those cases are distinguishable in that the regulation here involved was not applicable; there was no lobbying involved. In Lilly v. Commissioner, the Supreme Court expressly distinguishes *Textile Mills* on the ground that in the earlier case an interpretative regulation had been in effect for many years with Congressional acquiescence. 343 U.S. at 95.

This court in Sunset Scavenger v. Commissioner, 9 Cir., 1936, 84 F.2d 453, held that the doctrine of statutory reenactment in the face of a known administrative interpretation applied in that case. We think that doctrine can be [fol. 140] said to apply with equal force in the instant case.[5] What we have said sustains an affirmance of the judgment, but there is also another reason which also requires an affirmance. The trial court found that:

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[5] The lobbying regulation assumed its present form in Article 562 of Treasury Regulations 45 (1919 ed.), promulgated under the Revenue Act of 1918, and has since appeared without change, in all successive Regulations. See Article 562 of Treasury Regulations 45 (1920 ed.), 62, 65 and 69, promulgated under the Revenue Acts of 1918, 1921, 1924, and 1926, Article 262 of Treasury Regulations 74 and 77 (1929 and 1937 eds.), promulgated under the Revenue Acts of 1928 and 1932, Article 23(o)-2 of Treasury Regulations 86, promulgated under the Revenue Act of 1934, Article 23(q)-1 of Treasury Regulations 94, promulgated under the Revenue Act of 1936, Article 23(o)-1 of Treasury Regulations 101, promulgated under the Revenue Act of 1938, Sections 19.23 (o)-1, 29.23(o)-1, and 39.23(o)-1 of Treasury Regulations 103, 111, and 118, respectively, promulgated under the Internal Revenue Code of 1939, and Section 1.162-15 of the proposed Income Tax Regulations under the Internal Revenue Code of 1954.

"9. There was testimony to the effect that the Initiative, if passed, would have affected the wholesale business of Cammarano Brothers. However, the way in which the measure, aimed as it was at retail sales of wine and beer, would have affected the wholesale distribution of beer was not made clear. In any event, the measure was defeated."

This is a finding that appellants failed to sustain their burden of establishing by a preponderance of the evidence that the passage of the initiative would have impaired its business as a beer distributor.

Judgment Affirmed.

[File endorsement omitted]

[fol. 141] IN UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 15,350.

WILLIAM B. CAMMARANO and LOUISE CAMMARANO,
His Wife, Appellants,

v.

UNITED STATES OF AMERICA, Appellee.

JUDGMENT—Entered July 8, 1957

Appeal from the United States District Court for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

[File endorsement omitted]

[fol. 142] In United States Court of Appeals for the Ninth Circuit

Before: Orr, Pope and Fee, Circuit Judges.

Minute Entry of Order Denying Petition for Rehearing and Petition for Rehearing En Banc—October 15, 1957

On consideration thereof, and by direction of the Court, It Is Ordered that the petition of Appellants, filed August 27, 1957, and within time allowed therefor by rule of Court and valid extension thereof, for a rehearing and rehearing en banc, be, and each of them hereby is denied.

[fol. 143] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 144] Supreme Court of the United States

No. 718, October Term, 1957

William B. Cammarano and Louise Cammarano, his wife, Petitioners,

v.

United States of America

Order Allowing Certiorari—March 3, 1958

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

PLAINTIFFS' EXHIBIT 1

UNITED STATES OF AMERICA

STATE OF WASHINGTON

DEPARTMENT OF STATE

[EMBLEM]

To All to Whom These Presents Shall Come

I, EARL COE *Secretary of State of the State of Washington and custodian of the Seal of said State, do hereby certify* that the annexed is a true and correct copy of the Articles of Incorporation of "Pacific Northwest Beverage Distributors, Inc." and of all amendments thereto including amendatory articles showing change of name to WASHINGTON BEER WHOLESALERS ASSOCIATION, INC., which have been duly filed and recorded in my office in accordance with law. I further certify that the above named corporation is organized as a nonprofit corporation and is therefore exempt from payment of any annual license fees to this office.

In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Washington, Done at the Capitol, at Olympia, this 15th *day of* February, *A. D. 1956*

s/ EARL COE
Secretary of State

By s/ RAY J. YEOMAN
Assistant Secretary of State

[SEAL]

Articles of Incorporation

of

Pacific Northwest Beverage Distributors, Inc.

Know All Men by These Presents, That we, all being citizens of the United States, residents in and citizens of the State of Washington, do hereby associate ourselves together for the purpose of forming a corporation under the general incorporation laws of the State of Washington for corporations not formed for profit, being specifically Remington's Compiled Statutes, Sections 3888-3900, to be known as Pacific Northwest Beverage Distributors, Inc., and for that purpose do hereby certify and adopt, in triplicate, the following as our Articles of Incorporation.

Article I.

Section 1. The corporate name of this corporation shall be Pacific Northwest Beverage Distributors, Inc.

Article II.

Section 1. The principal office of this corporation shall be located at Seattle, in the State of Washington.

Article III.

Section 1. The purposes and objects for which this corporation is formed are to take full advantage of the rights and privileges granted under the Act of Congress known as "National Industrial Recovery Act" and entitled: "An Act to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of co-operative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the

consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources."

The corporation shall have enlisted in its membership beverage distributors of any and every description which come under the provisions of the Alcoholic Beverage Wholesale Industry Code of Fair Competition.

It shall be the purpose of this organization to promote orderly and fair dealings in beverages covered by the Code of Fair Competition for the Alcoholic Beverage Wholesale Industry; to pay fair wages to those employed in the industry; to promote the establishment and maintenance of price levels that are fair to brewers and manufacturers, distributors, retailers and consumers and protect the distributors against unfair practices of any and every kind and to prevent encroachment from others; to set up standard prices, codes of ethics and rules under which its members shall operate for their mutual benefit and the benefit of the industry as a whole; to eliminate unfair competition and to do any and all things necessary or incidental to the protection and mutual welfare of the distributors including the following:

(a) To formulate and prescribe terms of sale to be adhered to by its members and forms of contracts to be used by them in dealing with brewers and manufacturers and with the trade.

(b) To obtain and disseminate among its members and the trade information relative to or of value to distributors and to the trade.

(c) To set up standard practices, codes of ethics and rules under the National Industrial Recovery Act under which its members shall operate for their mutual benefit and the benefit of the industry as a whole, and to co-operate with the proper officials of the United States Government in enforcing and making effective such codes, rules, etc., as shall be adopted by the Government and/or Corporation.

(d) To make arrangements with the Secretary of Agriculture of the United States or other proper official for the

licensing of its members to operate under the code, rules and regulations as may be in effect from time to time.

(e) To negotiate terms, prices and other beneficial considerations from brewers and manufacturers.

(f) To do any and all things which any non-profit corporation formed under the general incorporation laws of the State of Washington may lawfully do, and which may be necessary, proper and convenient for carrying out or accomplishing any of the objects above specified.

(g) To acquire such personal property as may be necessary or incidental to the conduct of the corporation's business.

(h) To negotiate fair hours of labor and remuneration therefor with individuals, groups of individuals or organizations established for that purpose, and enforce any established labor or wage scales among its members.

The enumeration herein of specified powers shall not be deemed exclusive nor to affect the right of the corporation to exercise all or any other powers necessary or incidental to the accomplishment of its purposes.

ARTICLE IV.

Section 1. Any person, firm, corporation or partnership handling any beverages in the States of Washington, Oregon, Idaho and Montana and the Territory of Alaska which come under the provisions of the Code of Fair Competition for the Alcoholic Beverage Wholesale Industry, shall be eligible for membership in this corporation.

ARTICLE V.

This corporation shall not engage in any business, trade, vocation, avocation or profession for gain or profit.

ARTICLE VI.

The term of existence of this corporation shall be fifty years from and after the date of its incorporation unless its existence be sooner terminated as provided by law.

ARTICLE VII.

In the event of dissolution of this corporation, the assets thereof, after paying all debts, shall be distributed ratably and proportionately to the amount in membership fees, dues or assessments paid in by each member to the members of the corporation who have for a period of twelve months immediately prior to the said dissolution been members of the said corporation in good standing.

ARTICLE VIII.

Section 1. The trustees of this corporation shall be not less that two nor more than eighteen in number, the exact number to be specified by the By-Laws of the corporation from time to time.

Section 2. The Board of Trustees of this corporation who shall manage the business of this corporation until the 10th day of April, 1934, shall be:

V. J. Greene,	317-19 Nickerson Street, Seattle.
Wm. E. Quast,	Occidental & Main, Seattle.
Robt. R. Fox, Jr.	815-817 First Avenue, Seattle.
P. F. Glaser	2900 First Ave. South, Seattle

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 6th day of February, 1934.

s/ V. J. GREENE

s/ WM. E. QUAST

s/ ROBT. R. FOX, JR.

.....

s/ RAYMOND HOWIE

STATE OF WASHINGTON)
COUNTY OF KING) ss

THIS IS TO CERTIFY that on the 6th day of February, 1934, before me the undersigned, A Notary Public in and for the State of Washington, duly commissioned and sworn, per-

sonally came V. J. Greene, Wm. E. Quast, Robt. R. Fox, Jr., P. F. Glaser and Raymond Howie to me known to be the individuals described in and who executed the within instrument and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year above written.

s/ EDWARD—Illegible

NOTARY PUBLIC in and for the State of Washington, residing at Seattle.

AMENDMENT TO ARTICLES OF INCORPORATION

THIS IS TO CERTIFY that at a special meeting of the members of PACIFIC NORTHWEST BEVERAGE DISTRIBUTORS, INC., a non-profit, no stock Washington Corporation, held in Seattle, Washington, on January 25, 1946, pursuant to the provisions of its Articles of Incorporation and By-Laws, and in accordance with the provisions of the Laws of the State of Washington, the Amendment to the Articles of Incorporation hereinafter stated was adopted unanimously by the members, which said Amendment is as follows:

"ARTICLE 1

Section 1.

The corporate name of this corporation shall be WASHINGTON BEER WHOLESALERS ASSOCIATION, INC."

IN WITNESS WHEREOF, this Certificate has been signed this 14th day of October 1946.

s/ S. S. ELAND
President

s/ ROLLE R. CAMPLIN
Secretary

(Corporate seal)

(Rubber Stamp) Approved and filed—November 14, 1946—Belle Reeves, Secretary of State—by s/ Ray J. Yeoman, Assistant Secretary of State.

STATE OF WASHINGTON)
COUNTY OF KING) ss

This is to certify that on this 14th day of October, 1946, before me, a Notary Public in and for the State of Washington, personally appeared SID ELAND and ROLLE R. CAMPLIN, to me known to be the President and Secretary, respectively, of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed thereto is the seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

s/ T. M. MOTTER
Notary Public in and for the State of Washington, residing at Kirkland

No. 104720

Amended

ARTICLES OF INCORPORATION

OF THE

Pacific Northwest Beverage Distributors, Inc.

(Changing name to Washington Beer Wholesalers Association, Inc.)

Place of business Seattle, Wn.

Time of existence 50 *years*

Capital stock, $ None

STATE OF WASHINGTON, *ss.*

Filed for record in the office of the Secretary of State November 14, 1946 *at* 10:40 *o'clock* A. *M. Recorded in Book* 371 *Page* 49-50

DOMESTIC CORPORATIONS

s/ BELLE REEVES
Secretary of State

Filed at request of

Pacific Northwest Beverage Distributors, Inc.
1024 Dexter Horton Building
Seattle, Wn.

Filing and recording fee, $10.00

License to June 30, 19 $

Certificate mailed Nov 19 1946

to above address.

INDEXED PHOTOGRAPHED

S.F. No. 1108 4 45 5M 8611

PLAINTIFFS' EXHIBIT 4

1489M—Dec. 1947

TREASURY DEPARTMENT
WASHINGTON 25

[EMBLEM]

OFFICE OF
COMMISSIONER OF INTERNAL REVENUE

ADDRESS REPLY TO
COMMISSIONER OF INTERNAL REVENUE
AND REFER TO
IT:P:ER
BWL

Jun 15 1949

Washington Beer Wholesalers
Association, Inc.
805 Insurance Building
Seattle 4, Washington
Gentlemen:

It is the opinion of this office, based upon the evidence presented, that you are exempt from Federal income tax under the provisions of section 101(7) of the Internal Revenue Code and corresponding provisions of prior revenue acts.

Accordingly, you will not be required to file income tax returns unless you change the character of your organization, the purposes for which you were organized, or your method of operation. Any such changes should be reported immediately to the collector of internal revenue for your district in order that their effect upon your exempt status may be determined.

You will be required, however, to file annually an information return on Form 990 with the collector of internal revenue for your district so long as this exemption remains in effect. This form may be obtained from the collector and is required to be filed on or before the 15th day of the

fifth month following the close of your annual accounting period.

The collector of internal revenue for your district is being advised of this action.

Bureau ruling dated September 3, 1937, addressed to you under your former name, Pacific Northwest Beverage Distributors, Inc., holding you exempt under the provisions of section 101(7) of the Revenue Act of 1936 is hereby affirmed.

Bureau letter to you dated February 11, 1949, in which you were advised that inasmuch as you had failed to establish that you are entitled to an exempt status you should file income tax returns, is hereby revoked.

By direction of the Commissioner.

Very truly yours,

s/ E. J. McLARNEY
Deputy Commissioner

PLAINTIFFS' EXHIBIT 7

The Advertising Campaign Against Initiative 13 in Daily & Weekly Newspapers

DEFENDANT'S EXHIBIT B

(See Opposite) ☞

Note

Pages 152 to 161 are on Card 4;
Pages 162 to 165 are on Card 5

DEFENDANT'S EXHIBIT B

The MOCKERY of *Prohibition*

A Story of Special Importance to Every Washington Citizen,
Written by One of America's Outstanding Newspapermen.

Grateful Acknowledgment is made to the Chicago Tribune and to Mr. Clayton Kirkpatrick for permission to re-publish the following series of articles.

The marginal notations are *not* part of the original text. Any pointed reference to the failure and evils of Prohibition, are strictly *intentional.*

This booklet was prepared and distributed by

CITIZENS LIQUOR CONTROL COUNCIL, INC.

An Organization of Washington Citizens, Devoted to Liquor Control that is in the Public Interest, and Opposed to the Return of Prohibition

KANSAS, OKLAHOMA, MISSISSIPPI BONE "DRY" BY LAW, *SOAKING "WET" IN PRACTICE*

Washington Prohibitionists Also Planning Campaign Here

THIS BOOKLET is respectfully dedicated to you readers who remember the graft and corruption of the '20s and early '30s, the direct result of Prohibition.

The same evils that today beset Kansas, Oklahoma and Mississippi, are again threatening the State of Washington—through steps being taken now by Washington drys, which would return to our state speakeasies, illegal dives, political corruption and graft, and ultimately all of the evils of "bone-dry," state-wide prohibition.

It is not only possible, but extremely probable that, unless the citizens of this state awaken to the danger, Prohibition, partially now, and completely at a later date, may be forced on Washington State once again. The Drys have re-assembled their forces and are on the march once more. Not long ago, Mrs. D. Leigh Colvin, national president of the W. C. T. U., visited Seattle and in an interview, predicted that, "we'll have prohibition in five to ten years."

Recently, at a Prohibition meeting in Yakima, one of the leaders of the Washington Dry forces voiced his and other Prohibitionists' hopes for a "dry" Washington. "I stand for . . . state or national prohibition, any or all we can get."

When you read Mr. Kirkpatrick's report, keep in mind that the same consequences of Prohibition could easily be thrust upon the State of Washington, unless we, its citizens, are alert and resist the new effort of Prohibitionists to gain a foothold here.

Note

Pages 170 to 179 are on Card 5;
Pages 180 to 181 are on Card 6

THE FACTS about Kansas, Oklahoma and Mississippi are shocking. It seems fantastic that such conditions can exist in a nation whose people believe in law and order.

Yet, remote as it seems at this time, Prohibition, speakeasies and illegal dives—*the only alternatives to the legal tavern*—can return to the State of Washington, if the prohibitionists put over their first step—that of prohibiting the sale of beer and wine in taverns, groceries, and restaurants.

Beware of Prohibition propaganda—it's tricky, false, misrepresents facts. No matter what they say or deny, the Drys *do want total Prohibition in Washington State.*

Do not trust a Prohibition movement that admits through a leader its intent to deceive. William E. (Pussyfoot) Johnson, well known Prohibition propagandist, in his article, "I Had to Lie, Bribe and Drink to Put Over Prohibition," in *Cosmopolitan Magazine*, May, 1926 confessed:

"Did I ever lie to promote Prohibition? Decidedly, yes. I have told enough lies 'for the cause' to make Ananias ashamed of himself. The lies that I have told would fill a big book."

CITIZENS LIQUOR CONTROL COUNCIL, INC.

Eley P. Denson, *President* Joshua Green Bldg., Seattle